The Incorporated Accountants' Journal.

THE OFFICIAL ORGAN OF

The Society of Incorporated Accountants and Auditors

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Professional Notes.

IT will be observed that many of the usual features are missing from this issue of the *Incorporated Accountants' Journal*. The reason is not far to seek and will be found in the special and lengthy report covering several days' proceedings in what is shortly known as the "Royal Mail Case," being the prosecution of Lord Kylsant, the Chairman of that company, and Mr. Harold John Morland, the Auditor. This matter in all its implications is of such vital interest to the profession that we need make no apology for utilising to the full the facilities which this *Journal* affords of placing the full facts before our readers.

In the report of the meeting of the Council of the Society of Incorporated Accountants and Auditors, held on July 16th last, it will be noticed that Mr. Arthur E. Woodington resigned the Chairmanship of the Examination and Membership Committee of the Council, which he has filled for the past eleven years. Mr. Woodington also held the office of President of the Society for the period 1916-1919 and was for a considerable period one of the Final Examiners in accountancy subjects. He has rendered many valuable services to his fellow members during the long period of his membership of the Society. At the same meeting of the Council, Mr. Thomas Keens gave an interesting account of his recent visit to the United States and Canada and of his reception by leading members of the profession in both those countries, to whom the cordial thanks of the Council was directed to be sent.

The Report of the Committee on Finance and Industry, of which Lord MacMillan was Chairman, was published by authority on July 13th. The Committee was appointed by Treasury Minute of November 5th, 1929, "to inquire into banking, finance and credit, paying regard to the factors both internal and international which govern their operation, and to make recommendations calculated to enable these agencies to promote the development of trade and commerce and the employment of labour."

The Report covers over 280 pages without the Appendices. It is signed by all the members of the Committee, except Lord Bradbury, whose memorandum of dissent is separately given. The Committee examined 57 witnesses, several of whom attended on more than one occasion. They also received many written communications from individuals and from institutions and bodies interested in the various aspects of their inquiry. Through the good offices of the Bank of England, the Bankers' Clearing House, and others, the Committee had placed at their

disposal a large amount of statistical material hitherto unpublished and inaccessible.

On the recent working of the Gold Standard the Committee say: "Unfortunately, the anticipations of those who were responsible for our return to the gold standard in 1925 have to a large extent not been fulfilled. Whether these anticipations were justified at the time, and what other course was practically possible, are questions on which we do not all agree, but which it would be unfruitful now to discuss. The six years since that act of policy have proved to be of very abnormal character, and the sacrifices which a return to gold at the old parity involved have not been compensated by the advantages of international price stability which were anticipated. The accomplished fact of the restoration of our currency to the pre-war gold parity and its maintenance there for a period of six years creates, however, an entirely new situation, and it by no means follows, even if the view be held, as it is by some of us, that a mistake was made in 1925, that the consequences can be repaired by a reversal of policy in 1931."

The Committee also discuss in detail the consequences of the fall in prices of the severe dimensions recently experienced, and they observe that when prices fall, the first person upon whom the impact falls is the business man (unless the fall is due to an increase in efficiency). Nothing occurs automatically to change his costs of production save in a minority of cases, where wages are regulated by changes in the cost of living, or by sliding scales based on selling prices, and even here, whatever reduction takes place necessarily lags behind the fall of prices in articles of international trade. The result is, in the first instance, a narrowing of the margin between prices and costs, that is to say, a diminution of profit. The burden of reducing costs is thrown on business men to effect as best they can.

After considering how costs can be diminished, the Committee say that although a severe fall in prices, if permanent, in itself necessitates a reduction of costs if business is to continue on a profitable basis, the process of effecting adjustment involves great friction. That it has not been made in this country we show elsewhere. The result is that business, being unprofitable, is depressed, output is reduced, and unemployment results. We think that the recent increase in unemployment in every part of the world, accompanied by a decline in production, can in the main be attributed to the fall in the level of prices, unaccompanied by a proportionate reduction of money costs, however brought about.

Lord Bradbury, in his Memorandum of Dissent, says: "I regret to find myself in disagreement with most of the conclusions formulated in this Report. Leaving out of account for the moment the effects of the recent heavy fall of world prices, I think the main causes of the economic troubles of Great Britain since the War have been (i) the burden of unproductive debt; (ii) over lavish expenditure by the State and local authorities; (iii) excessive cost of transport and distribution, and of the products of sheltered and protected industries; and (iv) the attempt by all classes to maintain a standard of living higher than is justified by the facts of the economic situation."

The Report of the Committee should be studied in detail by Incorporated Accountants, whose information on the matters dealt with ought to be more accurate than that of their fellow citizens. As the Committee point out in their introductory observations, "every citizen is dimly aware that in some way his daily business is affected by the operations of the monetary system, but he is quite unable to appreciate how it is so affected. It is no exaggeration to say that to the vast majority even of intelligent people, the principles of finance and the theory of money are a closed book."

Last month the Select Committee on Expiring Laws issued their report. One of the recommendations is that the Courts (Emergency Powers) Act, 1914, in so far as it relates to orders made before August 31st, 1922, should be made permanent. The effect of this Act is to empower the Courts to make orders deferring the recovery of debts in cases where the default in payment is attributable to the War. Amongst the Acts which the Committee recommend should not be continued for longer than another year is the Increase of Rent and Mortgage Interest (Restriction) Act, 1920. This Act has far-reaching effects, and the action of the Government with regard to the recommendations of the Committee will accordingly be awaited with much interest.

An Inter-departmental Committee has also reported upon the working of the Rent Restriction Acts. The majority Report, which is signed

by fourteen of the fifteen members of the Committee, recommends the decontrol of Class A houses, *i.e.*, houses of the rateable value in April last of £45 and over in the Metropolitan Police District, and £35 and over in the rest of England and Wales. Houses of a rateable value of over £20, but less than £45 in the Metropolitan district and over £13 but less than £35 in the rest of England and Wales, designated Class B houses, should, in the opinion of the Committee, continue to be subject to the gradual process of decontrol established by the 1923 Act. Class C houses (*i.e.*, houses of a lower rateable value than Class B) the Committee consider should cease to be subject to the decontrolling provisions of the 1923 Act; in other words there should be no further decontrol of such houses.

The Royal Mail Steam Packet Company Case.

MR. H. J. MORLAND ACQUITTED.

The trial of Lord Kylsant, Chairman, and of Mr. H. J. Morland, F.C.A., formerly Auditor, of the Royal Mail Steam Packet Co., concluded at the Central Criminal Court on Thursday, July 30th, after a hearing lasting nine days. The jury acquitted Mr. Morland on the two counts of the indictment relating to the company's accounts and he was discharged, but Lord Kylsant was found guilty on the third count of the indictment, that of making and publishing a prospectus inviting subscriptions to a debenture issue, which was false in a material particular. Mr. Justice Wright passed sentence of twelve months' imprisonment in the second division. Sir John Simon, on Lord Kylsant's behalf, intimated an appeal.

THE WIDOWS', ORPHANS' AND OLD AGE PENSIONS (CONTRIBUTORY) ACT, 1931.

[CONTRIBUTED.]

THE Contributory Pensions Act recently passed might rightly be styled a measure to clarify certain provisions of the 1929 Act. That Act gave pensions to widows of 55 and over of men who died before January 4th, 1926. The conditions to be fulfilled under the Act are that the husband was registered with an Approved Society or as a Deposit Contributor at some time within three years of his death or three years before attaining the age of 70, if he attained that age. Widows' pensions are also payable if the husband's occupation—at some time within the three years period—was such as would have been insurable had the Acts been in force at the relevant period. Broadly speaking, the examination of claims is regulated as follows. If the husband died after July 15th, 1912, the insurance test applies; if before that date—the date of the commencement of the National Health Insurance Act—the normal occupation test applies. But there are necessary exceptions, particularly where part of the three years period fell immediately before or immediately after July 15th, 1912, so that either or both of the provisions might apply.

To understand the chief reason for the 1931 Act, it should be noted that if an insured person becomes incapable of work by illness, no loss of pension rights occurs. Periods of illness count the same as actual contributions paid, and the person concerned is kept in insurance while the period of incapacity lasts, the same as if at work. Moreover sickness benefit is paid, followed by disablement benefit, so long as proved incapacity is present in addition. Unemployment periods also count as contribution periods if proper steps are taken, but this applies only to employed contributors and not to voluntary. The intention of Parliament, as expressed in the debates on the 1929 Act, was that this rule of incapacity should apply equally to the normal occupation provisions, provided that the normal occupation of the person concerned before falling ill was one which the Acts made insurable when they came into force. But, in administration, difficulties arose in the application of this provision, with the result that some pensions were granted and some refused. Appeals were made to referees, who in many cases decided that incapacity to follow an occupation throughout the three years period mentioned in the Act, lost the right to call the former occupation "normal" even though the incapacity had prevented the following of an occupation which would have come within the ambit of insurability. A High Court decision was obtained to the effect that normal occupation (*e.g.*, the former one) did not necessarily persist throughout the period of incapacity. This decision upset the pensions of many widows who were intended to benefit by the 1929 Act.

The 1931 Act defines clearly the meaning of "normal occupation" in connection with cases in this category. It plainly states that the normal occupation provisions shall be deemed to be fulfilled if at the commencement of the statutory three years period the husband was incapable of work by illness and his normal occupation immediately before he became incapacitated was employment which would

have been insurable had the National Health Insurance Acts been in force at that time. The definition is also to apply in the case of genuine unemployment as well as incapacity through illness.

Thus, the Act makes plain that the occupational title of a person is the one he had usually followed before being stricken down by illness. It is provided also that if the husband had followed more than one occupation, that one which became an insurable occupation is to apply for the purpose of the sub-section concerned.

Examples.

(*a*) Husband, a journeyman baker, became seriously ill in 1910. Never worked again, being paralysed for 15 years, and died in 1925. Widow over 55.

(*b*) Husband, a general labourer, worked regularly until April, 1912, then became unemployed. Without securing employment was attacked by illness, becoming bedridden in August, 1912, and never recovered; died in 1917. Widow over 55.

The passing of time has also revealed that there are a number of widows of men who attained great age, and this very fact has precluded the grant of a pension to the widow. It is provided in the 1931 Act that if a man attained the age of 70 before July 15th, 1912, and died on or after January 4th, 1926, his widow shall be entitled to a pension if, within three years of attaining the age of 70, he was following an occupation which was made insurable by the advent of the Health Insurance Acts. The age limit under these Acts was originally 70, and many persons, although following an insurable occupation on July 15th, 1912, were precluded from admission into insurance by being over age.

Example.

Husband, a bricklayer, died March 20th, 1927, at the age of 85; born February 3rd, 1842, thus attaining the age of 70 in February, 1912, but, although carrying on his occupation when the Act came into force on July 15th, 1912, could not be insured on account of the age limit.

In cases such as these, however, if marriage took place after July 25th, 1929, no pension is payable unless at the date of death three years have elapsed since the date of the marriage or the widow had previously been entitled to a widow's pension by a former marriage.

It should be noted also that the 1931 Act is made retrospective to January 2nd, 1930, the commencing date of the 1929 Act, and awards can accordingly be given on claims made before the passing of the 1931 Act, notwithstanding that the claims were rejected before that date.

Society of Incorporated Accountants and Auditors.

COUNCIL MEETING.

A meeting of the Council was held at Incorporated Accountants' Hall on Thursday, July 16th, when there were present: Mr. Henry Morgan (President) in the chair; Mr. E. Cassleton Elliott (Vice-President), Mr. R. Wilson Bartlett, J.P. (Newport, Mon.), Mr. R. M. Branson (Leicester), Mr. Henry J. Burgess (London), Mr. W. Allison Davies, O.B.E. (Preston), Mr. F. Holliday (Leeds), Mr. Walter Holman (London), Mr. Thomas Keens (Luton), Mr. Ernest T. Kerr (Birmingham), Sir James Martin, J.P. (London), Mr. C. Hewetson Nelson, J.P. (Liverpool), Mr. James Paterson (Greenock), Mr. W. H. Payne (London), Mr. W. Paynter (London), Mr. A. E. Piggott (Manchester), Mr. G. S. Pitt (London), Mr. J. Stewart Seggie (Edinburgh), Mr. Percy Toothill (Sheffield), Mr. Frederic Walmsley, J.P. (Manchester), Mr. R. T. Warwick (London), Mr. E. W. C. Whittaker, J.P. (Southampton), Mr. Richard A. Witty (London), Mr. A. E. Woodington (London), Mr. J. R. W. Alexander, M.A., LL.B. (Standing Counsel), Mr. E. E. Edwards, B.A., LL.B. (Parliamentary Secretary), and Mr. A. A. Garrett, M.A., B.Sc., F.C.I.S. (Secretary).

A report was received of the resignation of Mr. A. E. Woodington from the chair of the Examination Committee, and that the Committee had passed a resolution of thanks to Mr. Woodington for his services as Chairman during a period of eleven years. The Committee notified that they had appointed as Chairman Mr. E. Cassleton Elliott, and as Vice-Chairman Mr. Richard A. Witty.

The President introduced to the Council Mr. Alexander Aiken, LL.D., F.S.A.A., a member and a Past-Chairman of the South African (Northern) Committee of the Society, Johannesburg, who was on a visit to England. Mr. Aiken shortly addressed the Council.

Mr. Thomas Keens, who had recently visited Canada and the United States as a delegate to the Congress of the International Chamber of Commerce, made a report to the Council of the reception accorded to him by leading members of the profession in Canada and the United States. The Council adopted a resolution of thanks for the hospitality extended to Mr. Keens, which was ordered to be forwarded to those concerned.

Mr. Walter Holman, F.S.A.A., was nominated as the representative of the Society on the Examinations Committee of the Royal Society of Arts.

The Secretary reported the deaths of the following members: Mr. John Henry Cooper (Associate), Rickmansworth; Mr. William Frederick Corker (Fellow), Sheffield; Mr. Mahadev Kashinath Dandeker (Fellow), Madras, India; Mr. William Dow (Fellow), Bridge of Allan; Mr. Walter Duval Goatly (Fellow), London; Mr. Frank Helliwell (Associate), London; Mr. James Benjamin Lapish (Fellow), Leeds; Mr. Charles Leach (Fellow), Runcorn; Mr. James McClintock McIntosh (Fellow), Birmingham; Mr. Arthur Ernest Pacy (Associate), London; Mr. Henry Pell (Associate), Stockport; Mr. Thomas Sterling (Associate), Johannesburg; Mr. Bernard Wadsworth (Associate), Chicago; Mr. Feather Ogden Whiteley (Fellow), Bradford; Mr. Bernard Welbourne (Associate), Winchester; Mr. Alexander Cockburn Woodhead (Fellow), Otley; and Mr. Arthur Thomas Robert Wright (Associate), London.

The President expressed the regret of the Council at the death of Mr. F. Ogden Whiteley, O.B.E., who had been a member of the Council from 1920 to 1928, and who had rendered valuable services to the Society in that capacity.

THE ROYAL MAIL STEAM PACKET COMPANY.

Trial of Lord Kylsant and Mr. H. J. Morland.

The trial commenced on Monday, July 20th, before Mr. Justice Wright, at the Central Criminal Court, of Lord Kylsant, Chairman of the Royal Mail Steam Packet Company, and Mr. H. J. Morland, formerly auditor to the company, on charges arising out of the affairs of the company.

The Counsel engaged in the case were as follows :—

For the Crown : The Attorney-General (Sir William Jowitt, K.C., M.P.), Mr. D. N. Pritt, K.C., and Mr. Eustace Fulton (instructed by the Director of Public Prosecutions).

For Lord Kylsant : Sir John Simon, K.C., M.P., Mr. J. E. Singleton, K.C., and Mr. Wilfrid Lewis (instructed by Messrs. Holmes, Son & Pott).

For Mr. H. J. Morland : Sir Patrick Hastings, K.C., Mr. Stuart Bevan, K.C., M.P., Mr. C. J. Conway, K.C., and Mr. F. J. Tucker (instructed by Messrs Slaughter & May).

When the Judge took his seat, Sir John Simon intimated that he desired to make a submission before the defendants were asked to plead.

The Judge inquired whether it was a matter which Counsel would like discussed in the absence of the jury, and Sir John Simon replied in the negative. He added that he desired to refer to the indictment, which contained three counts, and he wanted the Judge to consider whether or not, in fairness to the defence, greater particularity should not be shown in making the allegations which the indictment contained. The matter to which he desired to call attention was voiced in each of the three counts. The first count referred to the annual report of the Court of Directors of the Royal Mail Steam Packet Company for the year 1926, dated May 11th, 1927, which was a document of several pages of print and of figures. The allegation in the indictment was that it was an annual report which was known to be false in a material particular. One looked all through the count to ascertain the material particular of the charges, and it was stated that the report concealed from the shareholders the true position of the company with intent to deceive the shareholders. His submission, and he took it at that early stage of the case, was that in fairness to the defence it was right that the count should particularise. If there was not that particularisation, the count was saying that the document was false in a material particular, without setting out what the materiality consisted of. He submitted that he was right in saying that particulars should be given of the matters to which he had to address himself in the course of the defence. He respectfully submitted that if that was a civil case there was no doubt but that a Civil Court would require details to be given of the material particulars. Counsel referred to the Indictments Act, and quoted "Archibald," which stated, "Every indictment shall contain a statement of the specific offence or offences with which the accused person is charged, together with such particulars as may be necessary for giving reasonable information as to the nature of a charge." He contended that the indictment as framed did not tell him that he was to look at, say, page 3 or 4 of the balance sheet, but it "throws the whole thing at my head and says that it is false in a material particular."

The Judge said that the indictment went a little farther and stated "concealed from the shareholders the true position of the company with intent to deceive the said shareholders."

Sir John Simon declared that he was not seeking anything technical, but submitted that in a charge of that gravity it would be fair to his clients, before the trial was opened, that he should be firmly informed in what respect it was suggested that the annual reports in question were false in a material particular in that they concealed from the shareholders the true position.

The Judge inquired whether Counsel was arguing that the case should not begin that day.

Sir John Simon : Not at all. He added that he had intimated to the Attorney-General that he would make such a submission, and ask for particulars.

Sir Patrick Hastings intimated that he desired to associate himself with the submission made by Sir John Simon.

The Attorney-General said that it was correct that he had been previously informed by Sir John Simon that such a submission would be made, and he had therefore not been taken by surprise. In his submission the particularisation of the offence alleged was perfectly evident and enabled the defence to know what had to be met. If the Judge was in any doubt, he (Counsel) might be allowed to open the case, and if at the end of that there was any possibility of doubt, his Lordship could say that the prosecution should particularise.

His Lordship, turning to Sir John Simon, asked what he had to say to that suggestion. Sir John answered that he was willing to fall in with any such arrangement. The last thing he or Lord Kylsant desired was to put any obstacle in the way of the trial. After his Lordship had heard the Attorney-General's opening to the jury, he could come to a decision on the matter.

The Judge said that if he took the view put forward by Sir John Simon, then the particulars might be given the following morning. That would be the best course to pursue. The position was the defendants would plead, the case would be opened, and at the end of that opening the question of whether there would be further particulars would be discussed.

The Clerk of the Court then read the indictment against the accused.

In the first count of the indictment, Lord Kylsant was charged that he "on May 11th, 1927, being a director of a certain public company, to wit, the Royal Mail Steam Packet Company, did make, circulate, or publish, or concur in making, circulating, or publishing, a certain written statement or account, that is to say, an annual report of the Court of Directors of the said company for the year 1926, dated May 11th, 1927, which he knew to be false in a material particular in that the said annual report concealed from the shareholders the true position of the company with intent to deceive the said shareholders."

The defendant Morland was charged that "he aided and abetted, counselled or procured the said Owen Cosby Phillips, Baron Kylsant of Carmarthen, to commit the said offence."

In the second count of the indictment, Lord Kylsant was charged "that he on May 9th, 1928, being a director of a certain public company, to wit, the Royal Mail Steam Packet Company, did make, circulate, or publish or concur in making, circulating or publishing a certain written statement or account, that is to say, an annual report of the Court of Directors of the said company for the year 1927, which he knew to be false in a material particular in that the said annual report concealed from the shareholders the true position of the company, with intent to deceive the said shareholders."

Mr. Morland was charged with aiding and abetting and counselling and procuring Lord Kylsant to commit that offence.

In the third count of the indictment, Lord Kylsant was charged "that he on June 29th, 1928, being a director of a certain public company, to wit, the Royal Mail Steam Packet Company, did make, circulate or publish or concur in making, circulating or publishing, a certain written statement, to wit, a prospectus inviting the public to subscribe to an issue of 5 per cent. debenture stock in the Royal Mail Steam Packet Company, which he knew

to be false in a material particular in that it concealed the true position of the said company with intent to induce persons to entrust or advance property to the said company."

Both the defendants pleaded not guilty.

Sir Patrick Hastings said that under the new Act where the Court was of the opinion that a person might be prejudiced or embarrassed by reason of being tried for more than one offence, the Court might order a separate trial of any count or counts. In that case there were reasons which in Counsel's view made it essential that the trial should take place after a severance of the counts. On May 13th last, Lord Kylsant and Mr. Morland were in receipt of a summons in respect of an offence which related to the first count, and also a summons relating to the second count. The latter was a similar offence, but for a subsequent year. On the preliminary hearing on June 2nd, notice was given to the defence of a further charge in relation to a different matter, a different year, a different document and a different form of charge which was to be presented against Lord Kylsant. There was no difficulty whatever, so far as Counsel could see, in trying the first two counts separately from the last count. He quite appreciated that it might be urged by the prosecution that it might be a saving of time for the three counts to be tried together, because possibly some of the matters in relation to the count against Lord Kylsant in the first count would be necessary to be given in relation to the third count. He was sure that the Judge would be the first to say that the mere saving of time would not be a reason for permitting the indictment to be taken as a whole if there was really embarrassment in the view of the defence, and justifiably so in the opinion of the Judge. It was most important that the three counts should not be tried together. His Lordship was no doubt aware that there was a multitude of documents in the case, some of which were applicable to the first two counts, whilst some only related to the last count. The considerations on the first two counts might be entirely different, although some of the facts might be common to all three. It put the defence in a very serious position, in his view, if his client had to be tried on facts which were similar up to a point, and wholly different beyond that point, in connection with a further charge in which he was in no way concerned. He was sure that both the Treasury and his Lordship would use every endeavour to keep the two matters distinct, but it would be difficult for a non-technical tribunal to do so. In the interests of fairness, he asked that the two charges which related to the same matters and in which both the defendants were concerned, should be tried first. The third count, he asked, should be tried subsequently with a separate jury.

His Lordship pointed out that the third count related to the prospectus which Lord Kylsant was charged with publishing on June 29th, 1928. At present he could only deal with the matter as it appeared on the indictment.

Sir Patrick Hastings said he was sure that the Attorney-General would use every endeavour to make sure that there was the necessary distinction drawn between the charges, but it would be an extremely difficult matter.

The Judge said he was sure he would have the assistance of all the Counsel in that direction, and Sir Patrick Hastings remarked, "With so many of us here, I am not sure that would be an assistance. The matter would become more involved."

Sir John Simon said that he desired to associate himself with the objection which had been taken by Sir Patrick Hastings. The position was that either the trial must go on as at present arranged or else the first and second counts would be tried together, and the third subsequently. There was this difficulty: the accused were charged, not as a conspiracy, but both were charged in the first two counts. Supposing, for the sake of argument, witnesses were called for the defence of one. Those witnesses could be cross-examined for the Crown. It would not be fair for the Crown to assist itself by witnesses who were called for the defence in order to support the case on the third charge.

The Attorney-General said the defence had raised the point in the interests of fairness. He, representing the Crown, was as anxious as Counsel for the defence to see that fairness was observed. His submission was that there would be no difficulty at all. He had very carefully considered the lines on which he could put the case. He was confident that he could open the case before the jury in such a way that no embarrassment of the kind anticipated would arise. The facts were that the allegation of the prosecution in connection with the accounts of 1926 and 1927 were that they were false. In regard to the prospectus charge, no new evidence would be necessary at all. The prosecution relied simply and solely on the same evidence that they had to show with regard to the first two counts as to the position of the company. Mr. Morland had nothing whatever to do with the facts relating to the prospectus. He did not anticipate any difficulty at all, but the Judge had power to intercede, either before the trial commenced or at any stage of the trial. If, when the opening of the case had been concluded, and the Judge, knowing the facts, might think that there was any embarrassment, or danger of embarrassment, he could rule. The Attorney-General added that he took the responsibility of stating that having considered the matter very carefully, he was quite confident that he could open the case in such a way that no embarrassment or risk of unfairness would be caused.

His Lordship said that, in his judgment, the trial of the indictment should proceed as a whole. Under the present Act, the position was that charges might be shown in the same indictment if founded on the same facts. He could, at that stage, only deal with the matter on the face of the indictment and what he had heard from Counsel. It seemed clear to him on the face of the indictment that he was dealing with charges which were part of a series of offences of a same or similar character. In each case the charge was connected with the publication of a document said to be false in a material particular, namely, as concealing from the different parties in question the true position of the company. He thought there was no danger at all, so far as he could see at the moment, of any prejudice being sustained by either of the two defendants if the matter was dealt with as a whole. Any other course would to his mind involve almost impossible complications. The jury were quite capable of keeping those separate matters clear in their minds, and seeing what appertained to one count and what appertained to another, and distinguishing between the cases. If it should appear at any time there was any unfairness or risk of prejudice, he still had power to make such order as appeared to be just. So far as he could see at present he would say that the case should proceed as a whole against both defendants. In the first two counts both the defendants were jointly charged, and in the third Lord Kylsant was charged alone. Of course, in each one of the first two counts there must be questions relating peculiarly to each of the two defendants. So far as the first two counts were concerned, it seemed to him that the position of each defendant must be considered separately.

The jury, which consisted of ten men and two women, were then sworn.

One member of the jury intimated that he was a Chartered Accountant, and the Judge asked him if he desired to be excused. He replied that he had no objection to serving, and was accordingly sworn.

THE ATTORNEY-GENERAL'S OPENING.

The Attorney-General then opened the case for the jury, remarking that they had just heard the charge with which the two defendants were accused. It was an offence under a section of one of our Acts of Parliament for any person who was a director of a company to publish a written statement or account which he knew to be false in any material particular with intent to deceive shareholders. If the particular was false, the director must know it to be false, and there must be an intent to deceive shareholders. Lord Kylsant was charged that on May 11th, 1927, and on May 9th, 1928, he published accounts in respect of the years 1926 and 1927 of the

Royal Mail Steam Packet Company, of which he was a director. Mr. Morland acted as auditor for that company during those years, and he was charged with aiding and abetting Lord Kylsant. By a different set of words in the same Act, it was further made an offence to publish a written statement or account which was known to be false with intent to induce people to lend or entrust money or property to a company. Lord Kylsant was charged with a breach of those words by reason of the issue of a prospectus on June 29th, 1928. The jury would have to remember throughout the case that Mr. Morland had nothing whatever to do with that charge. No charge was made against Mr. Morland in respect of that at all. Therefore in opening the case to the jury at that stage he proposed to leave that charge out altogether, and address his observations to them just as though the only two charges were those in respect of the counts which dealt with the accounts of the company for the years 1926 and 1927. Mr. Morland in those charges was alleged to have aided and abetted Lord Kylsant.

He desired to explain to the jury in a word what his position as Attorney-General, or indeed that of any prosecuting Counsel, was in a criminal case. He was not present to endeavour to secure a conviction, or to try and ride round and escape from the rules of fairness or anything of that sort. His task was merely to put before the Court as best he could a plain unvarnished tale, without rhetoric and without emotion, in order that the jury might be assisted to come to a true conclusion as to whether the defendants were or were not guilty of the offences with which they were charged. Every man in this country, rich man or poor man, peer or peasant, was bound by the same laws, bound to observe the same laws, and to be tried for breaches of the same laws. Just as on the one hand they must show no preference to a man because of his wealth or his position, on the other hand no man merely because of his prominent public position must be made the target for unfair or unworthy attacks. Lord Kylsant was a director of the Royal Mail Steam Packet Company. He had no doubt that directors of companies generally frequently found themselves in a difficulty with regard to the management of their companies and the publication of the accounts. It could be well understood that the directors of a company would be reluctant, if things were going badly, to expose the nakedness of the land to the world and the fact that there were difficulties. One could well understand anyone being reluctant to frighten timid shareholders or to encourage competitors. Whatever the difficulties might be, the directors of a company were bound by the law. They were not entitled to publish a document which they knew to be false, with intent to deceive.

In the same way, the Attorney-General had no doubt that an auditor not infrequently found himself in a position of some difficulty. An auditor, as was well known, was not a mere servant of the directors. He was not appointed to do what the directors wanted him to do. He was not merely a specialist in some mystic or mysterious science of accountancy, and was not performing a mere symbolic act when he gave his certificate which appeared on a company's accounts. In one case which came before the Court some little time ago, an auditor was well described as "a watchdog to see that the shareholders' interests, the vested interests, are duly safeguarded and observed." When an auditor signed accounts, and stated "to the best of my information this balance sheet is properly drawn up so as to exhibit a true and correct view of the company's affairs as shown by its books," he was stating something upon which the ordinary investor was entitled to rely, and was stating something which he must know would be a matter which the ordinary investor would take into consideration.

The jury had to find in that case that a document was false in a material particular; that it was known to be false, and that there was an intention to deceive. The defendants were entitled to say that those facts must be brought home against them beyond reasonable doubt, and he, as representing the Crown, would be the first to say that if the jury had any reasonable doubt, the defendants were entitled to the benefit. He desired to make one observation with regard to the word "intent." He asked the jury to have quite clear in their minds the difference between an intention which meant that a man knew what he was doing and deliberately did it, and "motive," which was a wholly different thing. Motive did not matter so long as the intention was present. Motive was sometimes used in those Courts as a factor to be considered in ascertaining whether a person had considered a certain crime. Motive was frequently a very material factor to enable a Judge to come to a fair conclusion as to what punishment, if any, should be inflicted. There might be the motive of personal enrichment, or that which sprang from a false pride in being reluctant to let the true position of a company be known or to protect shareholders by putting forward what was untrue, or a desire to retain a distinguished personal position. Whatever the motive might be, it did not matter, so long as the jury found that there was an intention to deceive.

That case, like all cases which came before that Court, must cause considerable anxiety. That anxiety was none the less because the two men who were being tried bore honourable and distinguished records, both in public and private life. Lord Kylsant had for many years enjoyed a distinguished public career. He had risen to be chairman of the Royal Mail Steam Packet Company and of its associated concerns. That company, with its associated concerns, owned or controlled a very large amount of British shipping. Mr. Morland had been for many years a partner in one of the foremost accountancy firms in the City of London, the firm of Messrs. Price, Waterhouse and Co., whose name must be familiar to everybody who read the newspapers. Like Lord Kylsant, Mr. Morland had had a most distinguished career, and it was right that it should be emphatically stated that, prior to the allegation in that case, there had been no suspicion at all and no possible doubt cast upon the integrity and honesty of the two men who were now being tried. That was a factor, and a very relevant factor, for the jury to take into consideration when they were trying whether there was, or was not, any intention to deceive.

There was another side to the picture. Great possessions carried with them great responsibilities. Cæsar's wife should be above suspicion, and it was quite obvious that we must look to those who had achieved great positions in our public life, and the life of the City of London, to uphold untarnished its great records of fair and straight dealings. In that case they were not dealing with inexperienced men, but with very eminent men. The defendants were very eminent City men. If the jury came to the conclusion that the accounts were known to be false, they must, in his submission, also come to the conclusion that the person who put forward the accounts which they knew to be false intended to deceive someone. Who could that somebody be but the shareholders? He thought they would be the more irresistibly driven to the conclusion if they also thought that very carefully prepared phrases were made and used which would allay any suspicion or uneasiness in the minds of the ordinary prudent investor and which would conceal from him the true position—phrases so carefully constructed as to enable the defendants to say that the words they used covered what they did. If the jury thought that carefully prepared phrases would prevent the ordinary man understanding what was being done, then from the fact that the phrases were constructed in the way he had indicated, in his submission, forced them to come to the conclusion that there was an intention to deceive.

Sir William Jowitt then dealt at some little length with the constitution of the Royal Mail Steam Packet Company. He stated that it went back into almost distant history. It was a company with a great history behind it, and was what was called a chartered company. As most of the jury were aware, the majority of companies in existence at the present time were joint stock companies formed under the Joint Stock Companies Acts. The Royal Mail Steam Packet, however, went back to the time before those Acts were passed, and in those days companies were formed by Royal Charter. The Royal Mail Steam Packet Company had its constitution comprised in a series of Royal

Charters, the first of which dated from 1839, and the last was in 1920. There were one or two passages in the earlier charters which he desired to bring to the notice of the jury. In the first charter of 1839 there was a reference to accounts, and as the later charters did not deal with them, it was the one which governed the preparation and publication of the accounts of the company. The charter read: "And we do further will and ordain that previously to every yearly general meeting an account shall be prepared by the Court of Directors of the debts and assets of the said Corporation with an account of the profits made in the year ended December 31st preceding such general meeting for the time being, as near as the same can be ascertained and with all such information as may to the directors seem necessary to be given or may be required by any bye-laws of the corporation which account shall be signed by at least one of the auditors of the corporation and laid before such meeting." The constitution of the Court of Directors was also laid down in the charter. The words he desired the jury to remember were: "There was to be an account for every year, to be laid before the general meeting, firstly of the debts and assets of the said corporation, and secondly, an account of the profits made in the year."

"I want you," proceeded the Attorney-General, "to bear in mind those words." The third charter gave the power to issue debentures. The fourth charter set out that the auditor need not be a shareholder, and the words in the original charter in that respect were revoked. It was set out "Every auditor of the company shall have a right of access at all times to the books and accounts and vouchers of the company, and shall be entitled to require from the directors and officers of the company such explanations as may be necessary for the purpose of the duties of an auditor." Every report had to state whether the auditors were of the opinion that the balance sheet referred to in the report was properly drawn up so as to exhibit a true and correct view of the state of the company's affairs as shown by the books of the company. One of the later charters referred to the remuneration of the managing director. Lord Kylsant was the managing director, and the charter gave the directors power to fix the terms of his remuneration. It would be necessary at a later stage to explain to the jury the terms on which Lord Kylsant was remunerated. The charters also related to the payments of dividends out of reserves. The directors might, before recommending any dividend, set aside out of the profits such sums as they might from time to time think proper as reserves, insurances, or for suspense, and such sums should, at the discretion of the directors, be applicable to meeting any losses or depreciation in any of the company's assets or for the gradual liquidation of any debt or liability, or repairing and maintaining any property, or equalising dividends, or for dividends or bonuses or any other purposes which the directors thought might be to the advantage of the company. The directors could invest any moneys in such manner as they might deem expedient, or employ moneys in the business of the company.

He had dealt with the salient passages in the charters, but it might be necessary to refer to them later. It was necessary for the jury to understand something regarding the financial position of the Royal Mail Steam Packet Company, and he would try to put that matter before them as simply as possible. At all material times there were a number of debentures. Debenture holders were not shareholders at all, but were people who lent money to the company, and had some security. They were secured creditors; that was all. There were a number of debentures outstanding in the company. There were £1,400,000 4½ per cent. debentures and £3,100,000 5 per cent. debentures. The service of that debenture involved an annual charge of £218,000. That was the yearly debenture interest. That amount, it would be appreciated, had to be paid before the shareholders could receive anything. Otherwise, the debenture holders would foreclose and come in, and, if necessary, sell the company up. The Royal Mail Steam Packet Company also had a group of preference shareholders, some of them being 5 per cent. shares. There were a lot of 900,000 5 per cent. preference shares, and there were a further 2,900,000 6½ per cent. preference shares. He was told by counsel on the other side that they were really stock. The service of the preference stock, assuming the dividends were paid in full, involved a yearly charge of £233,500. Before they considered the ordinary shareholders at all, it was necessary to pay £218,000 on the debentures and £233,500 on the preference shares, or a total of £451,500. At all the material times, there was a quantity of ordinary stock, amounting to £5,000,000. Of course, the dividend on the ordinary stock, as the jury would appreciate, was not a thing which was fixed, and had a limit either up or down. To give them an idea how the matter worked, he would mention that a 5 per cent. dividend on the ordinary shares involved a payment of a quarter of a million pounds, and each point up or down represented £50,000. A 6 per cent. dividend on the ordinary shares meant £300,000, and a 4 per cent. dividend £200,000. The 5 per cent. dividend absorbed £250,000, and that was a dividend which was frequently paid. On the assumption that the ordinary stockholders received 5 per cent., it would be seen that for the service of the debenture, preference capital and ordinary stock there was required a little over £700,000. That was what the annual charge would be, assuming that the ordinary shareholders received a 5 per cent. dividend.

The Royal Mail Steam Packet Company owned six companies, which were generally referred to as the "100 per cent. subsidiaries." That was to say, with regard to each of the companies, the Royal Mail Steam Packet Company held all the shares, and anything that the subsidiaries earned came to the Royal Mail. Those subsidiaries might have their own debentures, and of course legally they were separate entities, but in each one the Royal Mail was the only shareholder. The first of those companies was "Royal Mail Meat Transports, Limited." It had an issued capital of £1,000,000, and the Royal Mail Steam Packet Company were the only shareholders. Then there was the Nelson Steam Navigation Company, Limited, and also H. & W. Nelson, Limited. The latter were a company really doing a brokerage and commission business, and acted as managers of the Nelson Steam Navigation Company, who were shipowners. The other companies were Robert MacAndrews & Co., Ltd., David McIver & Co., Ltd., and perhaps the most important was the Pacific Steam Navigation Company, with an authorised and issued capital of one and a half million pounds. There were also a number of associated companies with complicated interlocking shares, which he did not think would come into the picture. They included Messrs. Elder Dempster, the White Star Line, and Lamport & Holt.

In order that the Court might get some idea of the magnitude of the position, he would point out that the fleet of the Royal Mail Steam Packet Company, including the Royal Mail Meat Transport, came in round figures to something like 400,000 gross registered tons. If they included the 100 per cent. subsidiaries and the associated companies, there was a total gross tonnage of round about two and a half million.

With regard to Lord Kylsant's position, he was chairman not only of the Royal Mail Steam Packet Company, but also chairman of each of the 100 per cent. subsidiaries. He was paid quite a modest sum by way of fees by the subsidiaries of which he was chairman, but the relevance of the fact that he was the chairman was the fact that it differentiated him from Mr. Morland as he would know the history of the affairs of the companies, or have the means of knowing, whereas Mr. Morland's position was different. Lord Kylsant's remuneration, so far as the Royal Mail Steam Packet Company was concerned, was of little importance. It was settled in 1907. His remuneration was one-half per cent. commission on the gross takings of the company, provided that the company paid in any year a dividend of 5 per cent. on its ordinary shares. If the company did not pay 5 per cent. on its ordinary shares, then he got £3,000. On the other hand, if the company did pay 5 per cent. on its ordinary shares, he became entitled, under the agreement, to half per cent

of the gross takings, which, as a matter of fact, were calculated on the earnings of the Royal Mail Steam Packet Company, including the Meat Transport Company, after deduction for certain through rates, cost of forwarding, rebates thrown away, &c. The relevance of the matter was, and it was a factor which applied to Lord Kylsant alone, and not to Mr. Morland, that he had a very clear personal and pecuniary interest in having a dividend of 5 per cent. paid. If a dividend of 5 per cent. was paid, he became entitled to one-half per cent. of the gross takings, which amounted in 1927—when 5 per cent. was paid—to £27,000. In 1926, when the dividend was only 4 per cent., he got only £3,000.

So far as Counsel knew, he had not found the actual arrangement relating to Mr. Morland; it did not matter to that defendant whether the dividend paid was 5 per cent. or 50 per cent. It made no difference to the fees which Mr. Morland received.

Sir Patrick Hastings: It made not the slightest difference.

The Attorney-General said that the accounts for 1926 and 1927 contained items of about £2,100 for auditors' fees. He had, however, very little doubt that some part of that sum would relate to auditors' fees paid in Jamaica and elsewhere, and by no means all the amount went to Mr. Morland.

Sir Patrick Hastings: I would like to make it clear that Mr. Morland received 400 guineas per annum.

The Attorney-General said that so far as Mr. Morland was concerned, he understood that he only received 400 guineas a year, and whether the dividend was large or small, it made no difference to him at all. In one of the earlier charters he had already read, it was set out that at every yearly meeting there should be accounts showing the debts and assets of the corporation with particulars of the profits made in the year. The first document he would ask the jury to examine in detail, and on which he would make some observations, was the accounts for the year 1926.

Sir John Simon said he thought it would be impossible for the jury or anyone else to follow the case without having certain documents in front of them. At some stage of the inquiry certain of the documents would have to come before the jury.

His Lordship observed that at the moment the best course would be for the jury to be given copies of the annual reports to which counsel proposed to refer.

Sir William Jowitt said that bundles had been prepared containing the annual reports of the Royal Mail Steam Packet Company for the years 1921 to 1927.

Copies of these reports were handed to the jury, and the Attorney-General invited their attention to the annual report for the year 1926, saying he desired to give them "a bird's-eye view" of the document. There was, he added, the general balance sheet, which was headed "Report of the directors for the year 1926." The assets of the company appeared on the right-hand side of the balance sheet, the total being £19,900,000. On the other side of the accounts were the liabilities. From the point of view of accounts he was a novice, but they had to remember that a company regarded itself as having to account to its shareholders. The balance sheet showed the authorised capital at £25,000,000, and the various stocks which had been issued. The balance sheet also showed a reserve fund which the company had built up and which in due course might be utilised and dispersed for the purposes of the shareholders. That reserve fund appeared in the balance sheet at £1,450,000, and there was an insurance fund of £1,300,000. With the issued capital of £8,800,000, there was a total of £11,550,000. The profit and loss account showed a sum of £266,700. The account also set out that there were contingent liabilities amounting to £4,000,000, which Counsel said was in connection with the Trade Facilities Act, bills under discount and uncalled capital. The certificate set out, "I report that all my requirements as auditor have been complied with, and that I have compared the foregoing balance sheet with the books of the company. In my opinion the balance sheet is properly drawn up so as to exhibit a true and correct view of the state of the company's affairs as shown by the books of the company."

The important document was the profit and loss account. The balance sheet as a whole was laid before the general meeting and was a document required to be prepared under the charter showing the debts and assets of the company, as well as the profits made during the year. That profit and loss account showed "balance for the year, including dividends on shares," of £439,212, and there was transferred from the reserve fund a sum of £150,000, making a total of £773,493. The profit and loss account showed how that money was dealt with. The company paid interest to the debenture holders, who came first, as they were secured creditors, and that involved a payment of £218,000. Next there were further payments of £55,209, and then in order came the preference shareholders. Five per cent. was paid on the preference stock and 6½ per cent. on the cumulative preference stock, absorbing £188,500. Out of the surplus from the £773,000 it was proposed to pay 4 per cent. on the ordinary stock, or £200,000, and to carry forward the balance of £66,000.

The Attorney-General invited the jury to ask themselves what any ordinary person would infer from that document. He would see, in the first place, that there had been a transfer from reserve fund of £150,000, and that the company were paying the debenture interest, the dividend on the preference stock, and 4 per cent. on the ordinary stock. An ordinary person might say that in the year 1926 things might not be very easy, but the Royal Mail Steam Packet Company had got on fairly well. True, it had gone on the reserve to the extent of £150,000, but that was not so bad in such times.

"Members of the jury," said Sir William Jowitt, "the facts were these: instead of a transfer from reserve, which is there stated as being £150,000, instead of that being the amount of the transfer from reserve, the amount transferred from reserve or from items in no way relating to the year was £900,000. There was a loss, a trading loss for the year, on the running of ships, of over half a million pounds, the amount being £540,206. After bringing in interest on investments, there was still a loss of £272,000. This document, which purports to be an account of the profits made in the year, was in fact only rendered possible because there had been a transfer from reserves, not of £150,000, but a transfer from reserves of £900,000. Instead of that document showing, as any ordinary intelligent man would read it as showing, that there had been a balance for the year of £439,212, in fact there was a loss for the year of something in the neighbourhood of £300,000, because you get that balance for the year of £439,000 by bringing into the accounts £750,000 which in no way relates to the year at all."

The Attorney-General went on to say that he thought it was fundamental in that case for the jury to obtain a plain understanding of what was meant by reserves. It was necessary for them to understand what reserves were; how they were accumulated, and when they could be used. He had referred to a paragraph of a charter which set out that the company could establish reserve funds, and use them for various purposes. It was not only the Royal Mail Steam Packet Company or a chartered company which could establish reserves. Every well-ordered company, if it could possibly do so, should establish reserves. Sums might be put to a general reserve, a particular reserve, an equalisation of dividends reserve, taxation reserve, or any reserve which was desired. In so far as those reserves were disclosed, then no difficulty arose whatever. In the balance sheets of the Royal Mail Steam Packet Company, to which he had already referred, there were the reserve fund and an insurance fund. Those were two disclosed reserves. If it was desired to utilise those reserves, the directors were entitled to do so, but when they made use of the disclosed reserves, they had to show it in the accounts. If directors took from the general reserve a sum of money to put into the profit and loss account, they must show it. The reserve account of the Royal Mail Steam Packet Company at the end of 1925 was £1,600,000. In December, 1926, it was £1,450,000, as £150,000 had been utilised for the purposes of the profit and loss account. So long as there was disclosure of what was done, there was no difficulty at all. There was a

general reserve, and the directors were entitled to use it when they liked. Even a contingency reserve, when the contingency had passed, could be used.

Sir William Jowitt said that sometimes reserves were not disclosed at all, and it was here that the difficulty arose. It was necessary that they should see what that meant. When he said reserves were not disclosed, he meant that they were not disclosed to the shareholders. Of course, the reserves would stand in the books and would be known to anybody closely concerning himself with the affairs of the company, such as the chief accountant, and, of course, the auditor. If they looked at the accounts of the Royal Mail Steam Packet Company for the year 1926 they would see that the reserves, if they were secret, would be probably tucked away in the item called "sundry balances." Anyone asking for the "make-up" of that figure of £2,842,000, and who had the details given to him, would see that in part at any rate it was composed of certain reserve funds. They would be disclosed to the auditors, but undisclosed in the sense that anyone reading the balance sheet, any outsider, could not tell whether there was or was not a reserve. It was undisclosed in that sense.

"I have no doubt that it is by no means uncommon for a company in a good year to set aside out of its profits sums to what is called a secret reserve—that is to say, without disclosing to the shareholders that it has been done. Perhaps the business theory lying behind it is not far to seek. Shareholders, like other people, suffer from the defects of human nature. It may be that shareholders are apt to be unduly elated by what is a mere temporary success, and unduly cast down by what is a mere temporary depression. It may be policy, therefore, in their interests to smooth things out, to iron out the irregularities, and make, as one sometimes hears the phrase, the good years pay for the bad ones. A secret reserve may be constituted, and I do not doubt that a secret reserve is by no means infrequently brought into a profit and loss account, either to do away with, or to diminish a loss, or increase a profit, or turn a loss into a profit. I have no doubt that that is frequently done. You may say, 'Well, how does this square with the law, because the law says that you have got to make and publish fair and accurate accounts. How can it be accurate to say that you have only made £100,000, whereas in truth and in fact you have made £200,000 and put £100,000 to reserve.' There may be, and I daresay there are, people, purists and theorists, who say that that thing is wrong, and that this building up of secret reserves or utilisation of a secret reserve in the profit and loss account of a particular year is wrong."

Some purists might say it was wrong for directors to be in possession of information of which the shareholders knew nothing. Others would say that such a theory was wrong and would declare that the overriding consideration of the whole thing is that directors must by their accounts present a picture of the company as it really existed. They would say that the directors must exhibit a true and correct view of the state of the company's affairs. Some people might take the view that without secret reserves directors would call attention to the profit of the company which was really wholly exceptional and in no way reflected its profit-earning capacity, and that without those secret reserves they might call attention to a loss which was exceptional, non-recurring and temporary. A shareholder might think when a company had made a profit that he had struck an Eldorado when it was really only temporary. On the other hand, there might be a loss and the shareholder would suffer through the lack of temporary success. Might it not be that the true view was that so long as the directors were presenting a picture of the company as a living whole, as a continuous enterprise, and properly portrayed what was going on, there was no reason why they should show temporary and exceptional losses. Whichever view was right, the arena of a Criminal Court was not the place to fight that out. "I ask you to take the view which is the more favourable to the defendants. I may say that no one who is holding the office of Attorney-General would ever think of coming and prosecuting in a simple case where what was done was the simple utilisation of a secret reserve which was used merely to iron out or smooth out the ups and downs of business life. There obviously, however, comes a point at which the continued and deliberate and excessive utilisation of hidden reserves quite manifestly presents an untrue picture of the company. If such a case were to arise—as is the case I am going to submit here—if in the days of the war a shipping company makes very large profits and accumulates very large secret reserves, and thereafter steadily, year by year, enormous losses are made, and notwithstanding the enormous losses, dividends are paid, "business as usual," the time comes when it is quite obvious that unless something turns up, unless a completely new situation arises, that company is doomed. To present accounts and to utilise secret reserves in the profit and loss account, to make it appear that business is going on quite smoothly and happily, when in truth and in fact the company is inevitably drifting on to the rocks, is to present an absolutely untrue view of the company's prospects and the company's business, and is not presenting a fair and accurate account which you have to do by law. If it be said that you have to draw the line, it is terribly difficult to know exactly where you are going to draw it. I think I would say this, it is always difficult to know exactly where a line is to be drawn, but notwithstanding that, you can very easily tell whether a case is on one side of the line or the other. The case which I present to you here is a case in which you are only concerned directly with the two years 1926 and 1927. What the prosecution say is this, that the accounts leading up to the year 1926 show that what was taking place in 1926 was not a mere, casual, unexpected, unforeseen and temporary happening, but that the situation which had been going on through those years was being developed and maintained in the year 1926, and that under those circumstances the accounts for the year 1926 were wholly false."

It might be said that what had been done in that case had been done before. Secret reserves had been built up and used before. He did not doubt that such was the case. It might be said that unless such a procedure was followed, panic might be caused, when there was a temporary setback, and that there would be speculation and that in the long run shareholders would lose, and competitors of the business would be encouraged. Within reason he was not complaining of the utilisation of secret reserves, but he would say that each case must be dependent upon its own circumstances. He did not think that very much assistance could be gained by considering the circumstances of any other cases. Whether it was right or wrong in any given case must depend upon the circumstances of that particular case. The cardinal point as he saw it was that the accounts must reflect a fair picture of the enterprise as a living whole. They might "smooth out the ups and downs, make temporary, unforeseen happenings disappear, and diminish exceptional profits, but you have no right to allow an enterprise to go down steadily but surely to disaster by letting it live for years on the profits which it made, long ago, without at least telling the shareholders that you are doing so. If there has been any disclosure it makes the thing accurate. Do what you like so long as you disclose it."

Sir William Jowitt said he would ask the jury to consider the accounts of the Royal Mail Steam Packet Company for the years 1921 to 1925. There was, of course, no offence alleged in respect of any of those years. He would not question the propriety of what was done in those years, but consideration was of vital and critical importance to enable the jury to see the facts as they existed in 1926. He alleged that the accounts for the year 1926 failed to reflect a fair view of the company's affairs, and concealed from the shareholders that which it was manifest they had a right to know.

Counsel called attention to a document which had been prepared by the chief accountant of the Royal Mail Steam Packet Company, pointing out that Lord Kylsant had never seen the actual document. The year 1920 had been a very good one. It was a boom year and the directors very wisely, like prudent people, transferred sums to

reserve. Unfortunately that was the last of the years of prosperity. The harvest being over, the chill of winter set in, and 1921 was the first of the bad years which continued. The earnings of the fleet decreased. The company, however, still put aside something. Instead of there being a surplus, there was a deficit of £900,000, and even after allowing for interest on investments, the deficit was £452,000. To meet that situation there was utilised special credit, amounting to £1,120,452. The utilising of those special credits showed a surplus of £668,400. The special credit was made up of three items, consisting of bonus shares in Elder, Dempster & Co., £80,812; Nelson Line, Liverpool, £550,000; and Union Castle Company, £480,000. Those items were perfectly proper, but they were in fact bonus shares declared by the companies named, who were capitalising their profits. Those three companies, having made very large profits, capitalised certain of the profits by making a bonus issue. There was nothing in the least improper in making use of those items. Shareholders, however, did not get things of that nature twice. At any rate there was no reason why such a thing should occur on two occasions, and the bringing in of such items meant the utilisation of a thing which came once for the profits of a particular year. There was nothing improper, but it was utilising for one year's purpose something which in the very nature of things did not relate only to that year, except that it was paid in that particular period. The items obviously represented profits which those companies had accumulated in the war period.

Continuing his opening address, Sir William Jowitt asked the jury again to refer to the figures for 1922. They would see that there was a deficit indicated of £135,000. The item of excess profit duty—which meant payments from the excess profit duty reserve—amounted to £100,000. As he had told the Court, in the times of the war, shipping companies made vast profits. Excess profits duty was payable on profits made over what was known as the pre-war standard. The excess profits duty reserve of the company had amounted to £2,200,000—that was the amount that had been set aside for excess profits duty liability. Of that sum half had been paid over and half had not. Of the half which remained on hand £300,000 had been utilised for writing down investments. That was to say, £800,000 was left. The fund, therefore, consisted of £800,000, which had been left in hand, and there was also in it certain repayments which were made by the Revenue out of the £1,100,000 which had been paid over. That arose in this way. In the war years, when ships were being submarined right and left, ship owners were being encouraged to build ships. People had to pay very high prices for the ships, and consequently it was considered fair in the case of shipping companies that there should be an allowance in respect of obsolescence. Shortly, the result of that was that of the £1,100,000 which had been paid for excess profits duty, roughly £800,000 was paid back. The excess profits duty fund consisted of these two amounts, £800,000 in hand which had never been paid over, and £800,000 which was paid back, being part of the £1,100,000 which had been paid out. The reserve in respect of excess profits duty had been built up in the war period, the last payment to the fund being that of £125,000 in the year 1921.

The next reserve was the war contingency reserve. This was put aside in the war because it was thought possible that officers of the R.M.S.P. serving in the forces might have had some claim to the difference between their naval pay and the salaries they would have earned had they continued in their work for the company. This never in fact materialised, but the fund was built up.

Another item of £271,000 was put down as profit on the sale of steamers. That was again a typical instance of a non-recurring profit being brought in.

Sir William said he was not making any suggestion as to whether it was proper or improper to bring such an item into a profit and loss account.

Sir Patrick Hastings, K.C., said he understood that the Attorney-General had said that the figures in respect of the years 1921-25 were proper. Was he right, therefore, in assuming that there was no suggestion as to the item just referred to being improper?

Mr. Justice Wright: For the purpose of this case the items for those five years are treated as proper. I think that is the position.

Sir William Jowitt said that, as far as he was concerned, he was not challenging the propriety of any one of the items in the years 1921-25. All he was referring to them for was so that the Court might have a general picture before them when they came to the year 1926.

Counsel proceeded to refer to an item of £444,569 for fleet depreciation. During the war, he said, a large number of ships had been lost, and when the payments made under insurance contracts were received, in so far as those payments exceeded the amounts at which the particular ships stood in the books, the difference was carried to a fund called "Fleet Depreciation Fund." That fund differed technically from the other reserves. It was not earmarked for any particular ship, and it was again quite proper as a matter of accountancy to use it for a profit and loss account. But again it was a fund which was built up in the war. The items which he had mentioned as being of a non-recurring nature came to £860,000, and that £860,000 turned the debit for the year of £135,000 into a credit of £725,000.

In the profit and loss account for the year ended December, 1922, said Sir William, they saw that the profit for the year, including dividends on shares in allied and other companies, less depreciation of fleet, &c., was put at £725,000. As a dividend of more than 5 per cent. was paid on the ordinary shares, Lord Kylsant became entitled to receive his half per cent. of the gross receipts. The insurance fund was very much decreased; whereas in 1921 the amount exceeded £426,000, in 1922 it was only £195,000. Speaking without knowledge, he would infer that that was in part due to the fact that the war risks, which no doubt had to be provided for in the earlier years, were by that time passing away.

The figure in respect of depreciation of the fleet in the year 1922 was less than for the year 1921, when the figure amounted to £496,000, but that might again be accounted for by sale of steamers.

No one, said Sir William, could possibly regard the year with which he was dealing as anything but very unsatisfactory. There was a trading loss on the running of the ships of over half a million pounds, and a raid on the reserve fund to the extent of £860,000 to enable business to be carried on as usual.

Coming to the year 1923, said Sir William, they started with a figure of freights less running expenses, which was approximately £1,000,000. Depreciation of fleet, it would be noticed, had gone up very considerably, and the trading deficit was now £443,000—rather less than half a million; when interest on investments £422,000 was brought in, it left a deficit of £20,886. Some £800,000 was brought in by means of special credits from reserve funds. The income tax reserve fund paid £450,000. The income tax reserve, which had been in existence so far as this company was concerned from very early days, amounted by 1921 to £762,000. That fund was not static. It was in the nature of a river rather than a reservoir, because it augmented from time to time, by reason of the operation of sect. 34 of the Income Tax Act.

As the R.M.S.P. were making a loss, they were no longer liable to pay any income tax. On the other hand, the company in paying their dividends would deduct tax and the amount they deducted went automatically to swell the income tax reserve. The reserve, on the other hand, was reduced by this consideration—as and when repayment of excess profits duty was made that was deemed to be income in the year in which it was repaid. Broadly speaking, that was the history of the income tax fund. It was augmented by those more or less automatic methods. As he had said, in that year no less than £450,000 was taken from that reserve. Another reserve fund was that entitled "Deferred Repairs." That arose because during the war by reason of the nature of things, including the absolute necessity of not clogging up shipbuilding yards if it could be avoided, many repairs which

would normally have been done were left over. So they got a sum of £400,000 left over. The only thing he wished the Court to notice about those complicated facts was that this was a war reserve. It was a sum which resulted from the wise policy of putting things aside during the war period. So they got a total of £800,000 brought in to enable the company, notwithstanding the deficit of £20,000, to pay its debenture interest and its dividends.

In the profit and loss account for the year ending December 31st, 1923, Sir William stated, the balance for the year, including dividends on shares in allied and other companies, less depreciation, &c., was given as £779,114.

Mr. Justice Wright remarked that the expression used in this connection seemed to have changed.

The Attorney-General assented, and said it was important that the jury should realise what the change was. Hitherto, in the periods of 1921 and 1922, this particular item had been called profit for the year. Now it became balance for the year. Debentures were paid, interest and discount was paid, and preference dividends were paid. Six per cent. on the ordinary shares was paid. In 1923, as such a dividend was paid, Lord Kylsant was again entitled to a half per cent. on the gross takings. He received £26,045.

The year 1924 was no better than 1923. The figure they started with, freights less running expenses, was slightly less than in the previous year, and the deficit this time was just over half a million, being, in fact, £501,000. Deducting investments they had a deficit of just over £97,000. That year, in order—if he might use a homely phrase—to keep the pot boiling, they used £870,000 of special credits which is no sense related to that particular year. In the profit and loss account for the year ending December, 1924, balance for the year, including dividends on shares in allied and other companies, less depreciation, was given as £772,829. That was the figure they got after £870,000 special reserve was brought in. Six per cent. was paid on the ordinary shares, and in view of this Lord Kylsant became entitled to his half per cent. commission, which this time amounted to £26,495.

Coming to what he termed the last year in regard to the pre-1926 period, Sir William said the gross earnings, less running expenses, were put at £880,000. The deficit worked out at £309,000. Amongst the special credits which were brought in was an item described as investment profit of £490,209. This represented what the liquidator paid out on the winding up of the Nelson Company of Liverpool, over and above the figure at which the Nelson Company stood in the books of the R.M.S.P. Counsel said he made no complaint, but he merely asserted that it was in the nature of a special item, and was non-recurring. It was being made use of to swell the profits for the year 1925. The profit and loss account for the year 1925 showed balance for the year, including dividends on shares in allied and other companies, adjustment of taxation reserves, less depreciation of fleet, as £731,103. The jury would note that the phrase "adjustment of taxation reserves" was new. The dividend for that year was 5 per cent. instead of 6, as it had hitherto been, but as five was the qualifying figure, Lord Kylsant was entitled to receive and did receive, the half per cent. in respect of that year, the amount paid to him being £27,165.

Pausing there for a moment, said Sir William, he left the jury to consider what the records of the five years showed. During the period 1921-25, the following sums, amongst others, had been taken from reserve:—Excess profits duty reserve £830,000, Corporation profits tax reserve £40,000, Fleet Depreciation Fund £444,000.

The grand total of the utilisation of reserves, which he might substantially call war-time reserves, was £2,800,000.

The story did not end there. In addition to drawing on those reserves to keep things going during those five years, they had had recourse to non-recurring items, as, for example, bonus shares. Bonus shares in respect of the Elder Dempster, Nelson, and Union Castle Lines, together with investment profit on the winding up of the Nelson Line, accounted for £1,600,000. That was to say, there had been utilisation of special non-recurring items to the extent of £1,600,000. The total of these two was £4,400,000, and he thought it right, in considering that figure, to take off from it the amount of the special debits—they did not come to quite £400,000, but he would treat them as £400,000. They then got this result. In those five years, to carry on and pay dividends and so on, this company utilised £4,000,000 from its reserves.

Running through the records of the five years, the jury would see figures relating to interest on investments. In order to get a picture of the prospects of this company one should realise how far that interest on investments was likely to continue. If, for instance, interest on investments were being paid by companies doing exactly the same as the R.M.S.P., it was obvious that they could not rely on those investments going on very much longer. No doubt a substantial part of those investment figures were derived from 100 per cent. subsidiaries. Here again they had a fact which would be unknown to Mr. Morland, but would be known to Lord Kylsant. He would take the case of one of the subsidiaries—the Pacific Steam Navigation Company. The R.M.S.P. held the whole of the shares of that company, and Lord Kylsant was the chairman. The sum total of the figures relating to the business of that company was that during the years 1921-25 its deficits were £1,600,000 or, as he preferred to take it, £1,300,000, as the dividends were £300,000. It was quite obvious that if you spent £300,000 in dividends and you had such a deficit, although your life might be a merry one, it was going to be short. So far as that company was concerned, it would be rash to regard the payment of that dividend as something which would continue indefinitely.

During the five years Lord Kylsant had drawn in all a total of £135,000, notwithstanding the utilisation of the very large number of reserves. It might be said that the figures depended to some extent on depreciation, and that was quite true. It was quite obvious, however, that when a company had had five disastrous years, such as he had outlined, unless a turn of the tide came soon that company would go down if it went on paying dividends on its ordinary shares, or even on its preference shares.

The use in the accounts of the word "balance," to which he had already referred, might, said Sir William, be deemed a not unimportant fact in the case.

"First of all, why was it," said Counsel, "that the word 'profit' which had been used in 1921 and 1922, became 'balance'? One supposes that whoever was responsible for these accounts was not very happy about putting in the word 'profit.' Does the word 'balance' really make any difference? My submission to you is that that word 'balance' was a word carefully selected so as to arouse no suspicion in the mind of the man who saw it, but at the same time it was a word which would enable those who put it forward, if the time ever came when it was necessary, to say, 'We have not said there was a profit; all we have said is that there was a balance.'"

In his submission, said Counsel, the word "balance" in a profit and loss account of a company of that kind would convey to the ordinary person that it was a balance in respect of that particular year. If one saw, as in the profit and loss account for the year ending December 31st, 1923, "balance for the year," no ordinary person would draw any distinction between the phrase "balance for the year" and "profit."

With respect to the phrase "adjustment of taxation reserves," which appeared in the accounts for 1925, Sir William said it was his submission again a phrase had been quite deliberately prepared, selected and chosen as being one which would convey nothing whatever to the mind of the ordinary person, but at the same time would enable anybody to say in case the need arose, "All this is covered by adjustment of taxation reserves." It betrayed, he suggested, an uneasy conscience.

With reference to his summary of the years 1921-25, was he stating the case absolutely fairly when he said that the company had been living on its fat, and had used a great deal of its fat for the purpose of keeping alive during those last five years? If they looked at the balance sheet

for 1925, they would see the last item but one, an item of sundry balances, accounts not closed, &c., of £2,600,000. They would remember that in the good old days of 1921 sundry balances stood at over £6,000,000. Broadly speaking, they might say that the very heavy utilisation of reserves was reflected in those items. "This company, living on its own fat," said Sir William "is very rapidly becoming a skeleton when the curtain is rung up on 1926."

The Attorney-General next referred to the year 1926. In that year, he said, Lord Kylsant told Mr. Cason, the head accountant of the Royal Mail Steam Packet Company, to prepare an estimate because he said he wanted a forecast as to how 1926 would look, and he added the significant words, "And what reserve we have available to meet any deficiency." That illustrated rather well, continued Sir William, the type of mind of a person who was, to use a euphemistic term, arranging an adjustment. Accordingly, Mr. Cason prepared what he was asked for. This included an unpublished reserve of £600,000.

Replying to the Judge, Sir William Jowitt said that Mr. Morland had not seen this document and he was not in any way concerned with it. It was not an account, but a near estimate made before the year was up, but it did show that Lord Kylsant estimated a deficit of £1,100,000. Lord Kylsant told Mr. Cason that he was going to take a bonus of £200,000 from the Nelson Company, but for some reason or other that was cancelled, and although the bonus of £200,000 was passed through the books of the Royal Mail Steam Packet Company it was at a later date cancelled and taken out of the ledger, and never did, in fact, figure in the profit and loss account. As to the £200,000 Nelson bonus, it would appear that Lord Kylsant told Mr. Cason to take an extra £200,000 from the excess profits duty reserve. That Nelson bonus fell through.

Towards the end of the year 1926—but with regard to this it was necessary to point out that this matter did not concern Mr. Morland—Mr. Fisher, the general manager of Barclays Bank, wrote to Lord Kylsant relating to an overdraft of £200,000, making a total of £500,000 in all, and stating that he gathered it was Lord Kylsant's intention to repay in three months from the proceeds from a public issue. Looking at this 1926 account the jury should bear in mind this fact, that Lord Kylsant had in his mind at that date the fact that he had apparently given some undertaking to have a public issue.

"Well, now," continued Counsel, "I think you will readily understand that a public issue will be much more likely to succeed if you can dress up the accounts for 1926 in a favourable light. The Royal Mail Steam Packet Company might have had some difficulties in going to the public and asking them to subscribe to a public issue if they had said, 'We ought to tell you that we have built up a large reserve in the war time, and for the last five years have used £4,000,000 to carry on.' This consideration was of importance when deciding what was the intention upon this appeal being made to the public."

The next step was the preparation of the profit and loss account at the end of the year. Learned Counsel gave details of the various accounts and said that they included excess profits duty, £550,000 and income tax reserve, £175,000. This was put before the auditor and the next question was, "What to put before the directors?" because, after all, although Lord Kylsant was the chairman, he was not alone in this matter: he had got his brother directors. The document that was put before the Court of Directors showed nothing to disclose that there was any utilisation of any secret reserve at all. There was no disclosure, nor had the prosecution been able to discover any documents that could be put forward, showing that there was any transfer from these secret reserves. Mr. Cason would be called, who was present at the meeting of the Court of Directors, and he would be able to tell the Court that at that meeting of the directors no questions were asked about any transfer from reserves.

Counsel next drew attention to the profit and loss account for the year 1926. The transfer from the reserve funds then, he said, was £150,000. As a matter of fact they now knew that a sum of £750,000 over and above the £150,000 had been so transferred. The only way they could get it into the balance sheet at all was by including it under the phrase "Dividends and Adjustments," which would convey nothing to any ordinary person.

What distinction there could be between transferring from reserve fund £150,000 and another item under the word "Adjustments" he (Sir William) did not know, but would any ordinary person reading this balance sheet suspect there had been transferred from the reserve fund a sum of £900,000? In his submission that balance sheet was a false balance sheet, because it made it appear that there was a balance for the year of £439,000, whereas that balance was only arrived at by bringing in £750,000 which did not relate to that year. What was the use of talking about a balance for the year when in truth and in fact there was a loss for that year? This balance sheet Mr. Morland duly signed as being a true and correct view of the company's state of affairs. The dividend, this time, it would be observed, was only 4 per cent., and in view of the fact that the company were drawing on their reserves it was naturally impossible to pay more, and the result was that Lord Kylsant received only the £3,000 for the year. With this statement of accounts there was presented to the shareholders a report of the meeting of the Court of Directors, a document for which Mr. Morland was in no way responsible. At this meeting of the Court, Mr. Morland was seeking re-election as the auditor to the company. He wished to be re-elected by the shareholders. He was supposed to be in the position of safeguarding their interests. This was the sixth year in succession in which there had been a shattering loss, and in this year £900,000 was being taken from their accumulated reserves, although, so far as the shareholders could see, the amount was £150,000.

The language was carefully prepared and there was no hint that there was anything wrong. In these circumstances Mr. Morland offered himself to the shareholders as the auditor for the new year.

Sir John Simon, interrupting, remarked that for the first four months of the year 1926 there was a considerable increase in the quantity of outward cargo carried by the company's ships.

Sir William Jowitt said he did not dispute that. Under the circumstances he had related Sir William McLintock was called in to investigate the state of affairs and had he had prophetic instinct he, said learned Counsel, would probably not have taken the job on. He said that for the year 1926, in his view, the company had been overgenerous in their insurance and in their depreciation. The published account for the year ended December 31st, 1926, showed a profit of £478,535. Sir William said that he now wished to say something about the 100 per cent. subsidiaries. For the year 1926 they received in interest on investments £267,965. The position was that a part of the dividend paid by the Royal Mail Steam Packet Company was derived from dividends received from the 100 per cent. subsidiaries. So far as the Pacific Steam Navigation Company was concerned, that paid a dividend of £60,000, although it had sustained a loss of £153,000. The Meat Transport Company paid a dividend of £40,000, although it incurred a loss of £21,000. The Nelson companies were the ones right at the top at this time: they paid a dividend of £42,000, having made a profit of £80,000. But treating them as a whole, in 1926 the 100 per cent. subsidiaries paid in dividends £151,000, although the loss sustained between them amounted to £213,000. Coming to the year 1927, as in the previous year, the document for which Lord Kylsant was responsible did not affect Mr. Morland; so far as he (Counsel) was aware, Mr. Morland knew nothing about it. This document referred to the overdraft at Barclays Bank. This time, Mr. Fisher, the manager, was calling to remembrance the fact that it had been agreed to have a new issue made in order to square up the overdraft. Again Lord Kylsant instructed Mr. Cason to prepare a preliminary document, and this was first put before Lord Kylsant some time in 1927. By Lord Kylsant's instructions, Mr. Cason had set out the various reserves that were available.

The Judge: This was not shown, I gather, to Mr. Morland?—Sir William Jowitt: No, he never saw it.

Continuing, the Attorney-General said that Lord Kylsant told Mr. Cason to take what was necessary to pay a 5 per cent. dividend. It must occur to an ordinary man that the position was, to say the least, very unfortunate.

When the company paid a dividend of 5 per cent., Lord Kylsant was entitled to a substantial remuneration, and this was the seventh consecutive year in which the company had made very heavy losses, and yet Lord Kylsant was telling Mr. Cason to take what was necessary. It was an interesting sidelight. Accordingly, Mr. Cason prepared the document that was required, and it would be observed that the first item of £433,000 had come down to £185,000 simply because, as he (Sir William) took it, £247,000 had gone from the other side of the account. The net result was a total of £1,400,000. That was shown to Lord Kylsant, and Mr. Cason got Lord Kylsant's approval of what he proposed to do. Up to that moment Mr. Morland had nothing to do with the document at all. Then Mr. Cason took it round to Mr. Morland.

"That document," continued Sir William, "has now been lost, but it showed what transfers from reserves were being put through that year. Mr. Cason takes it round to Mr. Morland to get his approval. Mr. Cason says to Mr. Morland, 'I don't like it,' and Mr. Morland answers, 'Nor do I.' Notwithstanding that view expressed by Mr. Morland he signs the document."

The result was that it showed a profit or gross earnings for this year of £972,000. This was better than it had been since 1923, then there came the items for general administration, general repairs and maintenance, insurance fund, depreciation of fleet, depreciation of premises, £1,300,000, showing a trading deficit of £334,000. Then, bringing in the interest on investments, &c., there was shown a surplus of £224,000. The various details were laid before the directors, but nothing whatever was said about any transfers from reserves.

Mr. Justice Wright: Was there any transfer from reserves in 1927?

Sir William Jowitt: No, none whatever. But apart from all that there is nothing in my submission to indicate that there had been anything taken from reserves at all.

The Judge: What does "adjustment" mean?

Sir Patrick Hastings: I am going to suggest that it is a usual expression.

The Attorney-General continued and said that the profit and loss account for the year 1927 showed a balance of £697,000. He said he would next proceed to show how they expended the money. Debenture interest exhausted £218,000, and in the result the company once more paid a dividend of 5 per cent., and Lord Kylsant himself received for that year a sum of £26,842, that being his half per cent. commission on the gross takings.

This account, on the face of it, showed to an ordinary reader that the company had got on the credit side of the profit and loss account, in addition to the carry-forward of 1926, a profit of £737,000, but they now knew that the company only arrived at that figure by transferring £512,386 from their reserves, or at any rate from non-recurring items. Without that the company would have made a profit for the year of £224,000, or thereabouts, instead of the £737,000, that was to say, they would have had a profit insufficient to pay the first two items on the liabilities side of the profit and loss account, including the debenture interest. Sir William McLintock having gone into the figures for this year, came to the conclusion that the company had under-depreciated to the extent of some £40,000, but had over-insured to the extent of £10,000, making on balance a total of £31,000 worse than their accounts showed.

Then, continued Sir William, what about the subsidiaries? The Pacific Steam Navigation Company paid a dividend of £60,000, although it sustained its usual deficit of £160,000. The Meat Transport paid a dividend of £49,000, but it made a profit of £28,000. The two Nelson companies paid a dividend of £16,000, having made a profit of about £38,000. A feature of the 1927 account was that this figure of interest on investments of £559,000 included £300,000 bonus from the Nelson companies. Now, continued the learned Counsel, he would explain to the jury a most extraordinary story. Whatever technicalities they might use, it was absolutely pitiful that a great corporation of the City of London dealing in vast interests should resort to the sort of finance that he was now going to indicate. It would be remembered that the Royal Mail Steam Packet Company owned the entire shareholdings in Nelson, Limited, and the Nelson Steam Navigation Company—one being a brokerage company and the Steam Navigation a shipowning company. Lord Kylsant was chairman of them both. The first idea was to let the Nelson companies declare a cash bonus of £300,000—£200,000 one and £100,000 the other. That would have the effect of helping the Royal Mail Steam Packet Company's account considerably. It might have been inconvenient at that time to find the cash to pay the cash bonus, but this was arranged for. The Nelson Steam Navigation Company had £1,000,000 worth of share capital authorised, but not yet issued. How would it be if the Nelson Steam Navigation Company issued their at present unissued capital and the Royal Mail Steam Packet Company subscribed to purchase it? So that was arranged. The Nelson Steam Navigation Company were to issue £1,000,000 at par and the Royal Mail Steam Packet Company subscribed to these shares. A half of them were to be taken fully paid, but with regard to the other half they were to be 10 per cent. paid. That would involve this: the Royal Mail Steam Packet Company would be paying to the Nelson Steam Navigation Company £550,000. They had now to consider: First, the Nelson Company declared a bonus of £300,000. Secondly, the Royal Mail Steam Packet Company went through a procedure which made them owe to the Nelson Company £550,000. Then, thirdly, and most ingenious of the whole, "As we have got to square this up and find another £250,000, let us sell H. W. Nelson to the Nelson Steam Navigation Company. Let us sell those shares and that will mean £250,000." All this really meant nothing. The Royal Mail Steam Packet Company already owned the entire holding in the Nelson companies. They owned everything there was to own so far as shareholding was concerned. Neither did it matter if you had two companies and owned them each whether you sold one to the other or the other to one. It seemed to him (Sir William) to have no more effect than if he transferred money from one pocket to another. But these very complicated steps were taken, and there was a declaration of a bonus by the Nelson Company of £300,000, and a subscribing by the Royal Mail Steam Packet Company of £250,000. They got a credit in the profit and loss account of £300,000, and altogether they had got something which made things look better to the tune of that £300,000, and this accounted for the fact that in this year of 1927, in spite of the fact of the interest from investments being, as in 1926, £260,000 odd, this year it was £559,000. In 1926 and 1927 all the 100 per cent. subsidiary companies had paid dividends or contributed to this investment interest, and there was paid in dividends and bonuses, including the Nelson bonus, £576,000, notwithstanding that in these two years the same subsidiaries lost £383,000. This was the position with regard to the year 1927, except that he ought to repeat that the documents to which he had referred were not evidence against Mr. Morland.

Counsel read details of the directors' report. Mr. Morland offered himself in that report for re-election as auditor. The report showed that in the year the £150,000 was shown as transferred from reserve they published profits of £628,535 in the one year and £737,292 for the second year. They did not disclose transfers from reserves of £900,000 in one year and £500,000 in the other year. They did not disclose transfers which amounted to more than the profits for the two years. So far as Lord Kylsant was concerned, and with regard to those accounts, he knew that they were going to the public for a fresh issue. It could be said perhaps that secret reserves have before and frequently been brought into a profit and loss account. Counsel did not doubt that at all. Was it to be said that

they had been brought into the profit and loss accounts in circumstances comparable to the circumstances disclosed where they had a long succession of failures? Was it also to be said, as one went through the accounts, that the accountancy was perfect? One would expect that. It was not a matter of accountancy. What was wanted was a little more disclosure. Was it also to be said that it was the right policy to adopt, to continue to carry on and to keep the name of the company before the public so as to be ready when better times came along? Was that a good gamble to go on? Counsel did not think that the company's competitors would be unduly encouraged if no dividends were declared by the company. Counsel did know that the law said that one must not publish a false document with intent to deceive, whatever the view may be of the desirability of carrying on. It might be advanced that it was a good gamble. Unfortunately the dock was frequented by people who were optimistic gamblers who gambled with other people's money. Counsel asked the jury to form the opinion that the company had long passed out of the period of temporary ups and downs. It was a case where it seemed that unless things got better, and got better very promptly, the company was going to smash up. That was the position that they could all see. By 1926 and 1927 they had drawn another million and a half of the reserve and there was precious little left. Five and a half millions had gone. In 1927, without telling the shareholders a word, the Court of Directors declared a dividend of 5 per cent. on the ordinary stock, and Lord Kylsant took a commission of half per cent. on the gross takings. That was a time when the shareholders, the man in the street, had a right to be told what was happening. If that was right, and if there was a duty to tell the shareholders, they must be told plainly in words which would bring it home to the shareholders' minds. They were not there to attribute motive, but those two experienced business men who were in the dock knew every single thing that was going on. Counsel, in accordance with his duty, had to ask the jury for their verdict and he had to submit these facts. First, that Lord Kylsant published the accounts. That they were false and false to the knowledge of Lord Kylsant, and that he published them with intent to deceive the shareholders. With regard to Mr. Morland, counsel had to submit that he had aided and abetted Lord Kylsant in every way. When all was said and done, everything had to be kept upright and square in the City of London.

Counsel said he would like to deal with the case concerning the prospectus. The jury had to remember that in that count of the indictment it was a charge in which Mr. Morland was in no way interested. It was a charge against Lord Kylsant only. In the years 1926 and 1927 there were letters recording the fact that Lord Kylsant was going to make a new issue. About June, 1928, Lord Kylsant sent for Mr. Lewis, an assistant accountant, because Mr. Cason was on his holidays. Lord Kylsant asked what the funds were required for, and Mr. Lewis answered that they were for a bank overdraft, loans from associated companies, and new bills. Thereupon Lord Kylsant dictated a document to a clerk, to the effect that during the past ten years the average profits, including profits of the insurance funds, &c., had been sufficient to pay the interest on the present issue more than ——— times over. Counsel said that at a later date that blank was filled in. Lord Kylsant asked for certain information, which was given to him at his private house. The first print of the prospectus Counsel had not seen, but another print showed that the word "five" had been written in in the blank space. The final result of the prospectus was shown in an exhibit which he proposed to hand to the jury, so that they could see what had happened. That prospectus showed the authorised capital, which was authorised by Royal Charter. The company was established in 1839 and the object of the issue was to provide additional capital for the new freehold buildings and for the general purposes of the company. The company was said not to have issued debenture stock since November, 1914. The prospectus read that the Royal Mail Steam Packet Company, in common with other shipping companies, had suffered from the depression, and that the audited accounts of the company showed that during the past ten years the average annual balance available, after providing for depreciation and interest on existing debenture stock, had been sufficient to pay the interest on the present issue five times over. The last paragraph was printed in heavy leaded type, to make it look outstanding.

Counsel said that the jury had to think and consider the type of person who was interested in that prospectus. It was addressed to the prospective investor and was almost gilt-edged stock. The jury had to consider what was then presented to the investor and what was the relevance of setting out the past at all. Why refer to it unless they obviously meant that what had taken place in the past would happen in the future. That was the inference that the investor might hold on to. Wasn't it an utterly dishonest thing to put a document before the prospective investor and say. "This is what we have done in the past, and it is a fair indication of what you may expect in the future." The prospectus also referred to the various years in which profits had been made. In 1924 a dividend of 6 per cent. was declared. The jury would see how carefully the phrases and words had been selected. In the year 1911 the company was not very prosperous and they had practically no resources at all. Then with the war there was a great prosperity and the building up of those large reserve funds. After the war they started rapidly living on the reserves that they had made. Wasn't the sense in which the words were used quite plain? Test it in this way. If the company had gone to the City and asked the investor to invest money, stating what had taken place within the last seven years, was there any single person who would have loaned the company money? Everyone knew that the answer was "no" to that, but it was so easy for a clever man in a big position to select phrases which would conceal the truth. Look at the document as a whole. The whole thing was a deliberate statement very carefully phrased and cunningly devised by Lord Kylsant, who put the document forward, and it must have been intended to deceive unfortunate people up and down the country and to induce them to pay their money into the concern which, unless something happened very quickly, would slowly drift on to the rocks. Was the document a false document in the sense which Counsel had described? Was it known to be false and was there an intention to deceive? Counsel suggested that it was quite obvious that there was an intention to deceive, and if so, it was the duty of the jury to return a verdict accordingly.

Counsel said that he had come to the end of his opening statement, and he had tried to make the case as clear as he possibly could, and to tell the Court a plain unvarnished tale.

There was just one other point which Counsel wanted to refer to, and that was the way in which the matter came to light. There had been some moneys advanced to the company, and Lord Plender, who assisted the Government, took the view in October, 1929, that as there was a question of further time being required, it was desirable that the Government should have the whole matter looked into by an accountant who was entirely independent and had no connection with the company. Lord Plender said that he would like Sir William McLintock to look into the matter. That gentleman came upon the scene and was instructed by Lord Plender to make a report in connection with the affairs of the company. There was no doubt that Sir William McLintock was in a most invidious position, because the jury could imagine the feelings of a man going into the witness box and giving evidence against another distinguished member of his profession. Sir William McLintock would come to the Court in answer to Counsel's subpœna. Sir William would only be asked questions relating to the report that he had given to Lord Plender, but the defence might ask him questions about other matters.

Sir Patrick Hastings then stated that he would like to renew the application that he had made during the morning. The Attorney-General had dealt fully with all the branches of the case, and they had listened to every word

he had uttered. Counsel asked his Lordship to say that in the interests of the defendants it would be right and proper that the two charges should be dealt with separately.

The Judge: Mr. Attorney-General, do you desire to proceed with the case as a whole?

The Attorney-General: I do, my Lord.

The Judge: Then I think you are entitled to do so.

The hearing was then adjourned.

SECOND DAY'S PROCEEDINGS.

LORD PLENDER'S EVIDENCE.

Lord Plender was the first witness. He said he was the senior partner of the firm of Messrs. Deloitte, Plender, Griffiths & Co., Chartered Accountants. He had been President of the Institute of Chartered Accountants on several occasions and had served on a great number of Royal Commissions and Government Committees. He was a member of the Trades Facilities Act Advisory Committee. That was a Statutory Committee set up since 1921, when it was constituted, and Lord Plender became chairman of that Committee in 1925. The object of the Committee was to assist companies to raise money on advantageous terms with Government securities, and the Committee were to advise the Treasury on the applications which were received.

Lord Plender said that the Trade Facilities Act came to an end in March, 1927, and from that date no new guarantees were given. There were still, of course, the existing guarantees which had to be dealt with, and the members of the Committee were asked to continue to advise the Treasury when called upon, and Lord Plender personally was consulted from time to time by the Treasury with regard to the existing guarantees.

Lord Plender said that in October, 1929, an application was made by the Royal Mail Steam Packet Company with regard to their existing guarantees, and Lord Kylsant came to see him with regard to the postponement of certain claims due for repayment at the end of 1929 and in 1930.

Witness went on to say that towards the end of 1929 certain statements were supplied to him by Messrs. Price, Waterhouse & Co. Certain reports were received, and after consultation with the Treasury the conclusion was come to that the Treasury had no time to examine the reports in detail, and it was suggested that it would be advisable to have some independent person to look into the matter. Messrs. Price, Waterhouse & Co. had been instructed by Lord Kylsant to make the reports, and when Sir William McLintock had been instructed to make a report, there was certainly no reflection at all on Messrs. Price, Waterhouse & Co.

You were bringing a fresh accountant to examine the whole thing?—We wanted someone to make a report who had no connection with the company.

Was Lord Kylsant informed that Sir William McLintock had been nominated for the purpose?—Yes, he was informed in December, 1929, and he immediately said that every possible facility should be given to him, and Sir William McLintock stipulated that he should have a free hand.

And did he have a free hand?—I believe that every possible facility was afforded to him.

In reply to a further question, Lord Plender said that he had never seen the books of the company, he had never seen the officials of the company, and he knew nothing of their explanations.

And really all you can tell us is how Sir William McLintock came upon the scene?—Yes, I understood from the Treasury that that was why I was called here, to narrate the facts leading up to his appointment.

Sir John Simon said that he understood that Sir Patrick Hastings desired to ask Lord Plender some questions, but he personally had no questions to ask the witness at all.

Replying to Sir Patrick Hastings, Lord Plender said that he had been a prominent member of his profession for many years.

How long have you known Mr. Morland?—For many years.

Witness said that he had never had any professional dealings with Mr. Morland, but he came into close contact with him when he sat on the Trade Facilities Act Committee.

Do you know any member of your profession who enjoys a higher reputation for absolute honesty and integrity than Mr. Morland?—I do not.

I understand from the question which the Attorney has put to you that you have not had any opportunity of looking into the figures of this company, and that you know nothing about them?—No.

Witness agreed that he knew Mr. Morgan, the President of the Society of Incorporated Accountants, and he also knew Mr. Hill, the President of the Institute of Chartered Accountants. He had seen them in Court.

Sir Patrick Hastings then said he desired to ask some questions with regard to what the Attorney-General had referred to as "secret reserves." Sir Patrick said he would like to refer to them as inner reserves.

The Judge: Why the difference? I have seen them called internal reserves.

Sir Patrick Hastings: It sounded rather better.

The Judge: What difference does it really make?

Sir Patrick Hastings: Whatever we call them, it is a practice of many of the largest commercial enterprises in the country to have inner reserves.

Lord Plender said that it was quite usual for large commercial and industrial companies to set aside out of an unusually prosperous year sums to secret reserves.

Sir Patrick Hastings: Quite a usual and proper thing for companies to set aside large sums against their liability for excess profits duty?

Witness replied that that was the case when a company knew that a liability would mature some day, and as prudent people they would make provision to meet that liability when it matured.

And in the ordinary case, such a reserve would be set aside out of the profits for the year?—Yes.

In such a case, when it was discovered that they were not required, they would properly be brought back into the profits for subsequent years, and exactly similar conditions would arise in the case of reserve for income tax?—Certainly.

In the Attorney-General's view, up to a point those secret reserves being brought back in many cases would not be disclosed in a profit and loss account as having been brought from secret reserves?—Sometimes no reserve is made, but sometimes there is an indication that some transfer was made.

Witness agreed that secret reserves were used for that purpose, and there sometimes came a time when an auditor should say that some indication should be given to the shareholders that those transfers were being made.

Witness said that he had known of cases where there was no longer a requirement to keep a reserve for excess profits duty and it was brought into the credit of the profit and loss.

Lord Plender said that he agreed that there would come a time when the auditor would say that if the reserves were to be used again some indication must be given to the shareholders that the profit and loss account was augmented by transfers from the excess profits or other reserves.

Counsel asked if it was usual amongst accountants to employ various phrases such as "taxation adjustment" and "after adjustment of income tax reserve not required," and Lord Plender replied that that was so. Witness also agreed that those transfers might be either small or large.

If you saw such words you would understand that there had been transfers from excess profits duty or otherwise which might be small or large?—Certainly.

The Judge: How would you translate the word "adjustment?"—The definition is this: The difference between the sum or sums reserved or set aside to meet maturing obligations whose precise ascertainment is not known at the time such provisions are being made and the amount of the actual liability when it is ascertained and settled.

Sir Patrick Hastings: In using these words in the profit and loss "adjustment of taxation reserve," it is a phrase not uncommonly used by accountants?—I have already said so.

Would you agree that some shareholders would never understand a balance sheet at all? They would not know, perhaps, the difference between the word credit or debit?—It is very difficult to know the minds of other people.

Of course, if you give an indication to shareholders of the facts you have mentioned—the balance sheet and profit and loss accounts are sent out to shareholders before the annual general meeting?—Yes.

Witness agreed that any shareholder who wanted to know how much had been transferred, or any other question regarding the accounts, or regarding anything, was perfectly at liberty to ask for the information at the meeting of the company. Assuming that there was no amount specified, it was quite open to a shareholder to ask for information.

Lord Plender said he conceived such cases in the commercial world in which it was properly unwise for directors to give to the world indications of how their business was progressing. If a shareholder liked to ask questions, then the chairman at the meeting could give to the shareholder such further information as he thought it was proper to give. The auditor, of course, would have no control over the questions which were to be asked by the shareholder or of the replies which the chairman might give. He agreed that in addition to what had been referred to as hidden reserve, a great many companies had in addition a published reserve, and the published reserve appeared in the balance sheet every year.

And if any sum is taken from the published reserve for the credit of the profit and loss account, that appears from last year's balance sheet?—Yes.

In reply to further questions, Lord Plender said that in practice an auditor was bound to be influenced and pay a great deal of attention to the honesty and ability of the composition of the Board for whom he was working.

Sir Patrick Hastings asked if Lord Plender could say whether the Board of the company was a very distinguished one.

Counsel: Do you recognise one member of the Board who is one of the most distinguished lawyers practising to-day?—Yes.

Counsel: I want you to assume that never in his life has Mr. Morland ever owned, bought or sold a single share in any of these companies. Is there anything to the contrary in the practice of auditors for an auditor to buy and sell shares in the company in which he is auditor?

Lord Plender replied that he thought that auditors sometimes had shares in a company of which they were auditors.

The Judge: It might be very wrong for an auditor who had access to the inner workings of the company to buy shares, but not necessarily so.

Sir Patrick Hastings asked Lord Plender if the accounts were generally passed by the Board before they came to the auditors. Lord Plender said it was rather a difficult question for him to answer. His experience was that when an audit had taken place in a big company the examination might take many weeks, and the auditor had to proceed with the work before the directors held their meeting. Lord Plender said he appreciated the fact that the clerical work was very often done not by the partner in the firm, but by a clerk. It was not in every case that the accounts went then before the Board. In some cases perhaps the auditor would not see the accounts until they were passed, and in other cases he would. He did not think there was any general practice.

The Judge: Can it affect the accountant in any way or not?—I don't think so. The accounts are the accounts of the directors, and the auditor's duty is to examine and report on them.

SIR WILLIAM MCLINTOCK.

Sir William McLintock was then called. He said that he was a Chartered Accountant, and the head of the firm of Messrs. Thomson, McLintock & Co. Witness agreed that he had investigated the affairs of the group of companies known as the Royal Mail Steam Packet group.

Counsel: You have already heard that you were given every facility in your examination?—Every facility.

Dealing with the position in 1926 and 1927 of the 100 per cent. subsidiary companies, witness said that in 1926 the R.M.S.P. Meat Transport, Ltd., showed a trading loss of £21,945 after charging depreciation.

And in 1927, after charging depreciation the trading profit was £28,057?—Yes.

Did the company bring in transfers from old reserves in each year, in 1926 £62,500 and in 1927 £25,250?—Yes.

Did it declare dividends payable to the R.M.S.P. in each of those years?—Yes.

Did they absorb net £49,000 each year?—Yes.

Witness said that he dealt with the two Nelson Companies together. The actual working position was that H. & W. Nelson, Ltd., was the company which managed the other concern. Those two companies made profits in both years after charging depreciation, in 1926 £80,229, and in 1927 £38,113.

The Judge: Were there any debentures in these companies?—There are debentures in the Navigation Company; I don't know if they existed at that time.

Sir William McLintock went on to say that the Nelson Steam Navigation Company declared a bonus of £200,000, and H. & W. Nelson, Ltd., a bonus of £100,000. There were transfers from the reserves of those two companies in 1927 of £185,859. The two bonuses were credited in the accounts of the Royal Mail Steam Packet Co. in the profit and loss account for the year to December, 1927. The bonuses were actually declared in December, 1927, and cheques in payment were issued by the two companies to the R.M.S.P., which was the shareholder concerned. The cheques in favour of the R.M.S.P. were for the sum of £300,000.

Mr. Pritt: During that month did the Royal Mail Steam Packet Company apply for a further 1,000,000 £1 shares in the Nelson Steam Navigation Company?

Witness: Yes.

Did they pay for half of those shares in full?—Yes.

That is to say, £500,000?—Yes.

And issue a cheque for that sum?—Yes, I understand so.

Did they also pay out 2s. per share on the other half a million shares and issue a cheque for £50,000?—Yes.

Now, as far as we have got, the two Nelson companies handed the Royal Mail Steam Packet Company cheques for £300,000, and the Royal Mail Steam Packet Company in its turn issued to one of the companies cheques for £550,000?—Yes.

In the same month of December, did the Royal Mail Steam Packet Company also sell to the Nelson Steam Navigation Company the whole of the share capital which it held of H. & W. Nelson, Ltd., for £250,000?—Yes.

And thus the various cheques issued out and to the Royal Mail Steam Packet Company were £550,000 in, and £550,000 out?—Yes.

Leaving the actual cash position as it was before?—Yes.

When the operation was over, the Royal Mail Steam Packet Company held the whole of the shares in one of the Nelson companies, and that Nelson Company held the whole of the shares in the other Nelson company?—The result was just the same.

Sir William McLintock further stated that the whole of the operations referred to took place in the latter part of December, 1927. He went on to refer to another subsidiary company, David McIver & Co., Ltd., and said that in order to arrive at a proper result of that company's trading he took the view that he should make some alteration in the charge for annual depreciation. In that connection he had adopted a systematic method all through with all the companies when calculating depreciation. On the basis on which he calculated depreciation there was a modest increase in the case of McIver & Co. The company's accounts in 1926 showed a loss of £5,158, and his view was that the loss should be £4,563. To the latter figure he added a transfer from income tax reserve of £16,273, which showed an adjusted loss of £20,836. The adjustment of the depreciation represented an amount

of £10,255. That made a total adjusted loss of £31,091. The company did not pay any dividend in 1926. In the following year he again calculated the depreciation on the same basis, and that involved an increase in the depreciation allowance from £12,000 to £13,000. On the face of the company's accounts there was a profit for the year of £850. He had increased that figure by £5,000, but deducted the sale of investments. A profit was left, but after deducting certain other items and adding the increased depreciation, the adjusted loss for the year was £28,200. Again, in that year the company did not pay any dividend.

The next company was what might be called the larger company, the Pacific Steam Navigation Company. He produced the copy of that company's accounts for the year 1926, and Mr. Pritt said that it was desirable that copies should be handed to the jury in order that they might follow the evidence. He added that the report consisted of ten lines of information which was mostly formal. There were four entries on one side of the profit and loss account, and two on the other.

The witness stated that the accounts of the company for 1926 showed a profit, after charging depreciation, of £60,532. That sum was arrived at by taking the "balance available" of £80,000, and deducting £20,000 brought forward from 1925. The net figure of profit for the year was £60,532. He estimated that the actual trading loss for the year, after charging depreciation on the usual basis, was £183,755. The difference between plus £60,000 and minus £183,000 was £244,287.

Counsel: How was that figure made up?—Partly from the sale of vessels of £11,241, transfers from other accounts and sundry credit balances not required. Those three items made a total of £244,000.

Do any of those items fall within the classification of reserves?—I suppose the obsolescence account might be considered a reserve, and the £85,000 credit balances against which there was no liability would become a reserve.

In that year a dividend was actually declared and paid, which absorbed £60,000?—Yes.

Sir William McLintock then produced the report of the company for the year 1927, remarking that it was drawn up in substantially the same form as that for 1926. The profit for the year was almost the same, the actual sum being £59,422. His view was that in fact there was a loss on the year's trading of £160,748. The difference between the two figures was £220,170.

Counsel: How was that made up?—A profit on the sale of vessels £28,000, transfer from obsolescence account £75,000, transfer from miscellaneous reserves £32,000, surplus of income tax reserve £48,000, and sundry credit balances not required £35,000.

The witness's attention was then called to another subsidiary company, that of Robert McAndrews & Co., Ltd. So far as that company was concerned, he calculated the depreciation on a 20 years life basis. In 1926 the depreciation allowed was £75,000, and his own calculation was within a few pounds of that amount. In 1927 the company's provision was £19,778. He, however, calculated that the provision should have been £76,058. The company's accounts showed for 1926 a loss of £52,973. His calculations involved a certain number of adjustments, but they were small. His figure for the adjusted loss for the year was £57,107. In that year no dividend was paid. In 1927 the company's accounts showed a profit of £9,778. He made one or two minor deductions, and the main difference was in regard to depreciation, which was as much as £50,000. The adjusted loss for the year, according to his figures, was £47,428. No dividend was paid by the company in that year.

Counsel: Summarising the results of the figures you have gone into for the six 100 per cent. subsidiaries, do you calculate that 1926 showed a loss on the six companies of £213,669?—Yes.

And 1927 showed a loss on the six companies of £169,606?—Yes.

Witness agreed that in 1926 certain of the companies declared either dividends or bonuses amounting to £151,000, whilst in the following year the amount was £425,000. The Royal Mail Steam Packet Company had, of course, interests in concerns other than the 100 per cent. subsidiaries which brought in dividends.

Counsel next referred to the accounts of the Royal Mail Steam Packet Company itself, and the witness stated that on the company's figures for 1926, the balance to the credit of the profit and loss account, after charging debenture interest and depreciation, was £355,325. That was the surplus profit for the year. The balance for the year was £439,000. There were rents of properties amounting to £38,000, transfer fees £416, and a sum of £150,000 which was described as "the transfer from reserve fund." The total of those items was £628,000. To arrive at the profit for the year, it was necessary to deduct the debenture interest of £63,000, £155,000 for the 5 per cent interest, and discounts and interest of £55,209. After those amounts had been deducted, there was a profit for the year of the amount already mentioned of £355,325.

Counsel: On the face of the accounts there is the figure of £355,325; in arriving at that figure were transfers made from various unpublished reserves?—Yes.

Were they £175,000 from the income tax reserves?—Yes.

And £550,000 from the E.P.D. reserve?—Yes.

The other is the transfer of £150,000 appearing on the face of the accounts?—Yes.

Those first two figures of reserves, have they at any time, as far as you can ascertain, been disclosed on any published documents of the company?—No.

Was there in 1926 or in 1927 any disclosure of there being transfers from reserves to the profit and loss account except anything we may see on the face of the printed document?—No.

Was a substantial amount of those reserves free from any period prior to the end of 1926?—Yes, it was known that there was a very large sum free about the end of 1923.

The Judge suggested that the liability in respect of Excess Profits Duty had been practically ascertained, and the witness replied that the accounting period in that respect ended in 1921.

Sir John Simon said he would like the evidence of the witness on that particular matter to be given in rather more specific form.

His Lordship pointed out that the witness had been dealing with the Royal Mail Steam Packet Company's reserves for depreciation. At the end of 1923 it was known that a certain amount would be excessive.

The witness said that the provision which had been made by the company was in excess of the probable liability. Certain of his information had been obtained from the assistant accountant in the Royal Mail Steam Packet Company, who dealt with taxation matters.

Sir Patrick Hastings said he would object to any such evidence being given.

The Judge said the evidence was objected to, on the ground that it was only known as hearsay. He asked if the witness could give any information of his own knowledge. Of course, the books of the company were in Court. If information was only to be given from actual knowledge, there would be considerable difficulty experienced with regard to accountancy evidence. He added that the witness had said that the provision was excessive, and he asked when it became finally known that such was the case.

The witness said he thought it was some time in 1926 or in 1927. Before that it was well known——

Objection was taken to the evidence, and the Judge said that when a Court was dealing with accounts, it was impossible to apply the strict rules of evidence, such as when evidence was given by an eye-witness.

Sir John Simon pointed out that the witness had said that something was "well known," and he was anxious to ascertain if there was any document which could be produced on that point.

Sir William McLintock, continuing his evidence, said that in arriving at the true position of the Royal Mail Steam Packet Company for 1926, he took into account

the insurance items. The company charged in every voyage account a regular figure, calculated on a proper and reasonable basis for insurance. Those sums, in the course of accounting, were all credited to the insurance fund, which was not unnaturally drawn upon for the expenses of insurance. That insurance fell into two classes. When insurance was effected with the outside underwriters, the fund was used to pay the premium, and in the second place the company naturally underwrote some portion of the risk. The company underwrote a small portion of their own risk, and the claims arising under that were charged to the fund.

The witness explained that the whole purpose of that portion of his report was that he was asked to report on the current earnings, and his report was directed to that alone.

Counsel: It was particularly important that you should arrive, item by item, at a perfectly accurate view?—I had to deal with items on both sides of the account.

With regard to the insurance fund, you considered that the company should be legitimately credited with a sum of profit which it had not in its own books credited to itself, and the figure was £44,404?—Yes. He added that there was also a profit on the sale of vessels of £6,093. Those vessels had been written down below what was obtained for them. There was also a profit on the sale of investments of £25,000. There was a total of £862,465, which might be described as composed of items which in his view did not relate to the trading operations of the year.

Counsel: Of that £862,000, £150,000 does appear in the profit and loss account and the balance sheet?—Yes.

But on the face of the profit and loss account and the balance sheet, none of the others appear?—No.

We started with your figure of £355,000 as the profit shown for the year on the face of the accounts. If that is compared with your total of £862,000, does it show that in your view the year 1926 showed a trading loss of £507,140?—Yes.

After charging debenture interest and depreciation?—Yes.

There is one other figure which in your view it is fair to take into account. Calculating depreciation on the uniform basis you have always applied, if you compare your figure for 1926 with the company's figure, you find that the company had actually charged a larger figure for depreciation of between £60,000 and £70,000?—Yes.

The actual figures were, your calculation £553,581, and the company's actual charge £620,747?—Yes.

If that difference be credited against the £507,140, which you tell us was the trading loss for the year, it would make the loss for the year on the trading results of the company £439,094?—Yes.

The witness said that in the figure he had included the dividends received from all allied and other companies. The 100 per cent. subsidiaries contributed dividends in that year of £151,000. Proceeding, Sir William McLintock dealt with the accounts of the Royal Mail Steam Packet Company for 1927. In that year there was no transfer from the public reserves. The total of the three items on the credit side of the profit and loss accounts was £737,000, and deducting the charges for debenture interest, there was a "shown profit" for the year of £489,880, as compared with £355,000 in the preceding 12 months.

Counsel: Did the company take sums of money from three reserves totalling £385,693?—Yes.

Income tax reserve £120,000, E.P.D. reserve £232,780, and corporation profits tax reserve £32,905?—Yes.

The Judge asked the witness what he thought was the position in 1927, in regard to the excess profits duty and the income tax reserves.

The witness replied that there was a sum appearing in the books of the company to the credit of the income tax account. There was transferred from it to the profit and loss account a sum of £120,000. He was not particularly concerned in reporting on that matter, except as to whether the £120,000 related to the year 1927. He excluded it from the earnings of that year because it did not relate to it.

The Judge: Because you were reporting on the earnings of the company?

Witness: The current earnings. He added that the transfer from the excess profits duty of £232,000 was the last that was made. The sum that was standing to the credit of that account in the books was exhausted. It was closed by the transfer of £232,000. The corporation profits tax reserve he knew did not relate to 1927. He did not make any detailed investigation on the point. There was no need for it, so long as he was satisfied that the item did not relate to the particular year. If he had any questions to ask, he put them to the officials in the company's offices, and they most readily gave him all the information he sought in order to enable him to come to a conclusion as to whether items related to one year or another.

Mr. Pritt: So far as you have been able to ascertain, has the existence of any of these three reserves in 1927 ever been disclosed in any public document?—The figures, no, but there are the words on the statement.

The Judge: The amounts have never been disclosed in any form on any published report or accounts?

The witness replied in the negative, and he went on to state that in 1927 the surplus from the insurance fund was £10,000. However much the balance was at the end of the year, the company never treated it as a profit in 1926 or 1927. In the latter year there were items relating to profits on the sale of vessels and the sale of premises. The profit on the sale of vessels was £18,593, and on the sale of premises £90,338. In his view items totalling £483,816 were not part of the profits earned during the year. The amount shown in the company's accounts was £489,880, and deducting the £483,816, left a balance of £6,064, which for the moment might be termed the profit for the year.

Counsel: When we come to the depreciation, I think the company are charged £493,034, and the figure which you have taken, calculated on the usual twenty years basis, is £534,861, or a difference of about £41,000?—Yes.

If that is marshalled with the £6,064, it shows for the moment a loss for the year on balance of £35,763?—Yes.

In the figures is included the dividends and bonuses received from the 100 per cent. subsidiary companies of £425,000?—Yes.

Of which £125,000 is in dividends, and £300,000 was the two Nelson bonuses?—Yes.

The witness was then asked to consider the accounts of the Royal Mail Steam Packet Company, and its six 100 per cent. subsidiaries, and state what he estimated the trading results were for 1926 after charging debenture interest, interest on loans, and depreciation. He gave a total loss of £804,663, and for 1927 of £630,369. The net actual distribution to the shareholders, &c., of the company in 1926 was £346,800, and in 1927 it amounted to £386,800. The difference of £40,000 was due to the fact that in 1926 the dividend paid to the ordinary shareholders was less than that declared in 1927.

Sir John Simon commenced his cross-examination by asking the witness whether business people and accountants recognised the distinction between a trading account and a profit and loss appropriation account, and the reply was, Yes, they do.

Sir John Simon: It is a perfectly well understood distinction. A trading account of a business company in any year would be a statement of the earnings of the company from its trading on the one side, and what it had cost the company to make those earnings on the other side?—Yes.

The difference between those two would give you either a balance on one side or the other, which would be either a trading profit or a trading loss?—Yes.

Is that all perfectly clear in business and in accountancy?—Perfectly.

Do I really understand that in such an account as that you would not bring in such things as dividends from investments?—No, the term trading and profit and loss account is sometimes used a bit loosely as distinct from profit and loss appropriation account.

In answer to further questions, the witness said it was

usual to put the trading items first and then such other things as dividends from investments. It was not usual to publish details of the trading items, showing the expenses, except in total. In a trading account they would not get brought in such things as returns from the company's investments. It would be limited to the trading.

The Judge: It ought to be limited to the earnings on the trading of the company as if it had no external investments?—Yes.

Sir John Simon produced a copy of the accounts of the Royal Mail Steam Packet Company for 1926, and asked the witness to refer to the profit and loss account. He pointed out that the profit and loss account stated "includes dividends on shares in allied and other companies." There also appeared a reference to the rents of properties and other matters. He asked whether any competent business man or accountant looking at the document would know at once that it was not a trading account, but a profit and loss appropriation account.

Witness: No, it is not a trading account, but it is not a profit and loss appropriation account.

Any competent business man and any competent accountant as soon as he sees that document knows it is not and does not purport to be a trading account?—No, it is only an account intended to show the result of the trading, plus the other things shown there.

Do you suggest that any competent business man or accountant, looking at that document, would understand it to be the trading account?—No, it is not a trading account.

What you have been doing in some of your answers was recasting or reforming this page of the accounts so that it would become a trading account?—No.

You were endeavouring to ascertain for the year 1926 whether there would be a trading profit or a trading loss?—I was.

You have this morning been telling the jury what you regard as the trading result of the year 1926?—The trading result having regard also to dividends. I left in my totals, for example, the dividends which the Royal Mail had received from other than the 100 per cent. subsidiaries. I did not exclude them.

The Judge: You did arrive at what you considered to be the trading result?—Including those dividends, yes.

Sir John Simon said he had understood the witness had been working out figures, which to his mind showed a trading deficit for the year, and Sir William McLintock replied that that was so.

Whatever else this document is, it is not, and does not, purport to be the trading account?—I agree.

Because on the face of it it is bringing in some matters that would be no part of the trading account?—I agree.

His Lordship inquired whether there was anything to indicate whether the trading operations of the company for the year had resulted in a profit or a loss.

Sir William McLintock: No, it does not indicate it.

The Judge: There is nothing to indicate whether the trading operations resulted in a profit or a loss?—That is not unusual, my Lord.

Sir John Simon said it might be that the document would not give the information one way or the other, and the witness said, No, it does not.

Sir John Simon referred to a sum of £267,965, appearing in the accounts of the Royal Mail Steam Packet Company for 1925, and which represented the dividends on shares in allied and other companies. There was also income tax reserve £175,000, and an E.P.D. figure of £550,000, making a total of £725,000. In addition there was a profit on the realisation of investments of £25,776, and the sale of a ship realised £6,093 more than it stood at in the books. Before charging depreciation there was a profit on trading of £35,106. The total of those six figures was £1,059,940, and the depreciation charged for the year was £620,727. The balance of £439,213 was the figure appearing in the profit and loss account.

Counsel next referred to the depreciation which the witness had allowed in arriving at his own figures regarding the trading of the Royal Mail Steam Packet Company. The witness had referred to the "usual depreciation."

Sir William McLintock: I said that I had adopted a definite method throughout all the groups. It must be remembered that I was dealing with twelve different groups, and the Royal Mail is only one. The method I followed was to make a calculation on the basis of a 20 years life. I made no charge in the case of vessels which had been reduced to scrap value, and I followed that method throughout all the Royal Mail group and all the groups with which I dealt.

Is it your view that a 20 years life, which is a 5 per cent. basis, is the usual one?—It is a very common basis.

I don't know whether you would like to answer the question. Is it your view that the 5 per cent. basis is the usual basis?—Well, the Inland Revenue basis is 4 per cent., and the basis generally that has been followed through this group has sometimes been 4 and sometimes 5 per cent.

The Judge suggested that the witness should be asked if there was any common practice followed in the matter, and Sir John Simon pointed out that he had not been inquiring what had been the practice of Lord Kylsant and his company. Lord Kylsant, in order to be conservative and safe, might have allowed more depreciation than was usual.

The Judge asked the witness if there was any usual basis for the depreciation of vessels, and he replied that he only knew of one that could be termed "definitely the usual basis," and that was the Inland Revenue basis, which was 4 per cent.

Sir John Simon: The only usual basis you know is that of the Inland Revenue, which is 4 per cent. I think you served on the Royal Commission on income tax?—Yes.

One of the things which the Royal Commission on income tax considered was the difficult subject of the proper allowance for depreciation in connection with income tax?—That is so.

Do you remember the evidence given on behalf of the Revenue on the subject of the depreciation of ships?—I do not.

Witness said that if it was assumed that a ship had a twenty years' life, then the depreciation would be at the rate of 5 per cent. on the initial cost. On the other hand, if the life of the vessel was estimated at 25 years, the depreciation would be at the rate of 4 per cent.

Sir John Simon said that the evidence on behalf of the Inland Revenue before the Commission was 24 years and the break-up value 4 per cent. That meant that there was no necessity to make provision for the 25th instalment, because that would be provided by the scrap iron of the ship, and the witness agreed.

Counsel suggested that 5 per cent. would be an unusual amount to write off, in the sense that it was setting aside more than might be regarded as quite sufficient.—The witness replied more than the normal. There might be circumstances which would make it proper to write off more, having regard to the type of vessel, and the cost at the time of delivery.

Is there anything known to you in the records of the Royal Mail Steam Packet Company which make you suggest that in the present case 5 per cent. is necessary and 4 per cent. is too little?—Well, I can only tell you what I did.

Sir John Simon said he would like a direct answer to the question, and inquired if there was anything known to the witness in connection with the Royal Mail Steam Packet Company and its fleet which made him infer that 5 per cent. was necessary and 4 per cent. was too little.

Witness replied that the answer was neither yes nor no. He had to have regard to when the ships were built and their cost. It was perfectly well known to him that ships were built when costs were high. He did not pretend to a detailed and accurate knowledge of every ship the Royal Mail Steam Packet Company possessed. He examined the costs of all the vessels and their age, and adopted the twenty year life basis as being what he thought was a fair one. He might have provided too much or too little.

In more than one case when ships came to be sold they

were disposed of for more than the value that existed in the books ?—Yes.

Other things being equal, is that an indication to a candid mind that it may be that the companies write down the ships too severely ?—I agree. Wherever the price realised is in excess of the book value, it is an indication that the depreciation may have been too high.

Are you aware that, apart altogether from this 5 per cent. depreciation, there was a sum of £1,152,000 set aside by Lord Kylsant and his directors as a special reserve for depreciation ?—There was a sum. I have the details of the amount.

Was this £1,152,000 over and above the 5 per cent. ? I have already explained I have not investigated the earlier years, when it was built up, but I think it might be taken quite definitely that it was over and above.

It comes to this, that when you take the accounts of the company, and make such adjustments as you think proper, you have not made any allowance at all, have you, for the fact that there was this special depreciation reserve of over one million sterling ?—No. I think it is only right to say I made a complete report, and in that report I set out all that I have done, and how I arrived at my figures. There is only before the Court a small portion of that report.

In your report you arrive at a value of the fleet on a twenty year life basis ?—Yes.

What was the total of the value so arrived at ?—The total of the twenty year life of the combined fleet was £15,212,598.

Did you at the same time ascertain at what figure the fleet stood in the books ?—Yes, thirteen and a half millions.

You knew that the fleet had been written down in the books by one and a half million sterling below what it would be valued at even on a 5 per cent. basis ?—Even on the twenty year life basis.

Supposing you substitute a 4 per cent. basis, could you tell us roughly what the difference would be ?—More than fifteen millions.

Sir John Simon remarked that even he could follow that, and the Judge said he would like to know what the difference was. It was only a matter of arithmetic, but he would not attempt to work it out.

Sir John Simon : It would make the fifteen millions bigger.

The Judge : Of course.

Sir John Simon : And it would make the contrast between that and the book value still larger ?—Yes.

Sir John Simon, resuming his cross-examination of Sir William McLintock, referred to income tax credits and E.P.D. reserves credited to profit and loss account in 1926 and 1927 with a view to showing that these sums had become available during those years and were not taken from old reserves. He said he understood that the sum of £175,000 was transferred to profit and loss account in 1926, and he asked if it were witness' view that that sum was an old reserve. Witness replied that it was not his view, and his reason for putting it in his statement was that it did not relate to the year 1926. Sir John Simon said he could understand a sum being a reserve in the sense that it existed and was available in a period before the year 1926. Witness replied that that was what he had meant to convey. Sir John asked in what year the sum of £175,000 had become available first, but witness replied that he could not say.

In order to trace the origin of this amount, Sir John referred to a summary of the income tax ledger. In this summary he referred to three items totalling £196,000 odd. The first of these was a figure of £121,237, representing tax deducted from dividends paid ; a figure of £5,190 cash ; and a figure of £70,000 representing repayment of tax on E.P.D. There was a deduction of £13,000 from this figure, leaving a balance of approximately £180,000, and his suggestion was that that £180,000 had arisen in the year 1926.

With regard to the tax deducted from dividends paid (£121,237), Sir John pointed out that it was the proportionate deduction which the company was entitled to make when it paid the dividend, and nothing was more clear than that the company, when it did deduct such an amount, did not deduct it as an agent of the Government, but kept it. So that in the course of the year 1926 the company had got that amount and had not got it at the commencement of the year. Witness agreed that the company had got it by deduction.

Coming to the amount of £70,000, Sir John secured the admission from witness that this amount was received during the year 1926.

Counsel : Am I not right that each of these figures, whether plus or minus, arose within the year 1926 ?—These figures do undoubtedly.

Counsel : The amount is just over £175,000 ?—That is so.

Counsel : Then it is the case, is it not, that £175,000 and a little more was a credit in the income tax reserve account and £175,000 was transferred in the year 1926 to profit and loss ?—Yes, that is so.

Sir John then put forward some figures relating to the year 1927, with a view to proving the same principle. In the profit and loss account for 1927 there was a figure of £697,456, and he discussed the manner in which that figure was built up. One item was in respect of income tax, £120,000. It had arisen in a corresponding manner to the figure mentioned in regard to 1926. Witness agreed that the income tax account was built up in the same way in both years, except that there was a large charge for a sum allowed from subsidiary companies in one year, and he did not know how that affected it.

Counsel : Is it correct that in the course of 1926 the company received from the Revenue rather more than £175,000 on income-tax account, and that in the course of the year 1927 the company received rather more than £120,000 ?—That is so.

Counsel : Is it the case that in 1926, the very year in which the company received the first amount of income tax, they transferred it to profit and loss account ?—Yes.

Counsel : And is it the case that in 1927, the very year in which the company received another amount of income tax, they transferred it to profit and loss account ?—I am not so clear about 1927.

Counsel : You are clear about 1926 ?—Yes, quite.

Counsel said it was plain that new money had come to the company from the Inland Revenue to the extent of £150,300 (tax deducted from dividends), and that in the same year in which they received it they had transferred £120,000 to profit and loss account.

Counsel : Then it would appear that the £175,000 in the year 1926 and the £120,000 in the year 1927 were, as a matter of fact, transferred to profit and loss account in the years in which they were received ?—That is so.

Counsel : Assuming that these amounts fall into the hands of the company, they are amounts of a sort and character and kind which is distributable in dividends ? They form, that is to say, a portion of the credit which goes into the profit and loss account ?—Yes, the tax retained in effect makes the payment of the debenture interest less and provides a fund out of which dividends could be paid if you account to the Revenue for them.

Counsel : If I compare the situation in that income tax account at the beginning of the year 1926 with the situation at the end of the year, would it be correct to say that Lord Kylsant and the accountant were drawing money out or putting money in ?—The balance was greater at the end of 1926 than at the beginning.

Counsel : So that the reserve, so far as that account was concerned in 1926, was increased ?—Yes.

Discussing excess profits duty, Sir John asked if the same thing were true in respect of the transfers from E.P.D. account to profit and loss account for the years 1926 and 1927. Witness said the composition of the two accounts differed. They had started building up the E.P.D. account year by year from the time the tax was imposed, *i.e.*, 1914.

Counsel asked if it were not a fact that that which was transferred to the profit and loss account in 1926 from E.P.D. account in the same sense was a figure arising in that year, or did witness think that it was an old reserve ?

Witness replied that he had no information as to what sums were recovered in the year 1926 from the Inland Revenue.

Asked in what year the E.P.D. accounts were settled with the Revenue, witness said he believed the very last settlement was made some time in 1926 or 1927.

Dealing further with excess profits, Counsel said there were three things which gave rise to possible controversies with the Revenue. In the first place, there was the liability of the company for E.P.D. calculated by reference to a pre-war standard, and working out the proper figure for balance of profit in each year. He asked if witness could say in what year the Revenue had finally agreed what the pre-war standard of the Royal Mail Company was. Witness replied that he could not, and added that they had probably reopened the case again.

Counsel said he supposed witness would agree that it would be a prudent thing for a company not to transfer sums on E.P.D. account to profit and loss account until they knew they were safe. Witness replied that that was why he assumed they had started in 1922.

The second matter of controversy, continued Counsel, related to the allowance made to the company by the Revenue in respect of obsolescence. He pointed out that the great British shipping companies had been appealed to and had built all the shipping they could during the most difficult days of the war, often at very high prices, to replace the tonnage that was being sunk. Consequently the Government had promised that they would in some way make it up to the shipping companies who had built the ships when prices were very high, by allowing them an allowance in respect of obsolescence. He asked if the settlement of this matter in the case of the Royal Mail Company had involved years of discussion. Witness agreed, and said that he was told that the obsolescence allowance was settled in 1923. Counsel put it to the witness that it was actually settled in 1927, but witness replied that he believed a very large proportion of the claim had been admitted in 1923.

The third matter of controversy to which Counsel referred was that of the deferred repairs allowance. The E.P.D. had lasted for seven years, having ended at about 1920. Many companies had run their ships very hard during the E.P.D. period, without making all the repairs that would have been made in any ordinary peaceful year. The consequence was that subsequent to the E.P.D. period they had incurred very heavy repair charges. He asked if it were not true that an arrangement was made with the Government, although the E.P.D. period was over, and although the repairs were deferred, whereby an allowance was made in respect of repairs. Witness replied that the Government had generally made an allowance, not only to shipping companies, but to everyone else affected. Counsel asked if witness could say in what year the Royal Mail Company had settled this matter with the Government, and when witness replied that he did not know, Counsel suggested that it was about 1926. Witness said that the final settlement may have been then.

Counsel then gave an example to prove his point. He referred to a letter, dated April 22, 1921, from which he said it appeared that there was an agreement for the year 1917, that £546,198 would be the agreed charge on E.P.D. against the whole of the Royal Mail group. The letter was from a firm of Chartered Accountants in Liverpool, and stated that the computation of duty for 1917 had been agreed with the Inspector of Taxes, and that the amount of the assessment was £546,198, in respect of which £545,875 had been paid on account.

Mr. Justice Wright asked what was meant by the expression "Royal Mail group," and witness replied that it referred to the Royal Mail Company itself and its 100 per cent. subsidiaries.

Counsel pointed out that if the £546,198 was settled finally in respect of the group, the Royal Mail itself would only get its portion of that. He went on to state that in 1927 the Revenue, so far from agreeing the figure of £546,198, had finally agreed a figure of £976,048. Witness said he did not know that. Counsel then said that of the £976,048, the proportion for the Royal Mail Steam Packet Company and the Meat Transports was £515,000 odd. If those figures were right, he said, it meant that it would be all wrong to imagine that in 1923 the figures were finally settled. Witness replied that he had obtained his information from a letter written by the accountants in Liverpool, dated December 28th, 1923, to the company. The letter stated that the writers had prepared an estimate of the liability for 1920; that, taking the figures so far as they were agreed with the Inspector of Taxes, together with the claim for deferred repairs, and making ample provision for further adjustments, they considered the liability would not exceed £130,000. What was it, in that letter, asked Counsel, that Sir William McLintock, qualifying himself to give evidence in this case on the point, relied on?—Witness replied that the amount provided in the books was in excess of the liability as estimated in that letter.

Counsel asked if it were on this that the suggestion that the company were engaged in drawing on old reserves had been made. He asked if the witness was under the impression, before the case started, that the Royal Mail Steam Packet Company, in 1926 and 1927, were drawing on old reserves. Witness replied that he was.

Counsel: In your deposition you say that the companies brought in transfers from old reserves. That was based on what you said in your report "large transfers from old reserve accounts"?—Yes.

Counsel: Are you now satisfied that, as regards the income tax contribution to begin with, it arose in the year in which it was transferred?—I am satisfied that there was a sum which could fairly have gone to the credit of profit and loss account.

Counsel: Are you satisfied that the same thing is true about 1927?—For income tax, yes.

Counsel: Are you satisfied now that it was a misapprehension to suppose that there were figures finally settled in 1923 in regard to E.P.D., and, on the contrary, that very much larger amounts were subsequently substituted?—No, I do not agree.

Counsel then referred to a letter dated March 7th, 1925, written by the Inland Revenue to the Royal Mail Steam Packet Company. The writer had said that it appeared that the adjustment of the company's liabilities was still so far from settled that he was afraid nothing could be done in the way of approving a further interim repayment at that time. Counsel asked if witness would not now agree that, if the situation were as disclosed by that letter, it would be difficult to describe the funds as old reserves, as though they had been free to be drawn from long before.

Witness said it was only fair that he should indicate exactly what he had had in front of him when he had excluded them as part of the earnings of these particular years. He emphasised that he was dealing with current earnings. The Royal Mail Company had made provision, during the seven years referred to, amounting to £2,260,000 as the possible liability. The ultimate total liability was £1,773,000.

Counsel asked in what year that was fixed. Witness replied that the matter was reopened and finally agreed in 1927. He continued that they had obtained an obsolescence allowance—which was set off against the ordinary calculations as to the liability of £1,187,000, so that the net liability was, in round figures, £600,000, but they had provided £2,260,000 during the seven years. That was his justification for stating that the sum carried from that over-provision had nothing to do with the earnings of either of the years 1926 or 1927.

Counsel commented that that was a very clear explanation, to which he would refer later, when addressing the jury.

Counsel (continuing): Remember that you are testifying in a criminal charge. Is it your evidence that, as regards any transfer from E.P.D. account in 1926 or 1927, the company, at the time they had made that transfer were consciously drawing upon what were ascertained to be old, free reserves?—Yes.

Counsel: That is your evidence now?—Yes.

Counsel added that he would put questions on that matter to Mr. Stewart at a later stage.

Sir John Simon said he would assume for the sake of argument that a company in a bad year did draw upon old reserves and did assist to make its power to distribute a dividend by so doing. There was no doubt, was there, that if the reserves were free, they were legitimate subject matter for distribution?—Sir William said he did not know.

They are undivided profits?—Yes.

When one speaks of a company as equalising or seeking to equalise its dividend, it means, does it not, that during the period of good years it does not distribute all it might, in order to assist it in the bad years?—Yes.

There is just one thing more. Will you look at exhibit 59. It is called "balance proof income tax reserves." As I understand it, these entries are in the books of the Royal Mail Steam Packet Company. I think this particular exhibit has been prepared by Mr. Matthews. I think it will show an internal calculation as to what the reserve would be in any given year. It shows, does it not, that the only part of the income tax reserve which was regarded as surplus or free at the beginning of the year 1926 was £99,000?—That is what that note would convey to me. The balance of it was owing.

In other words, if you wanted to know what it was at the beginning of the impeached year 1926 it would appear that at the most it was £99,000. That is, after you had added the £50,000 in?—Yes.

Do you get a surplus reserve twelve months later of £208,804?—Yes.

And that is after taking out in the course of the year and paying over to profit and loss account the £175,000?

Sir William did not at first answer that question, and Sir John Simon then asked, "Is not a fair inference from those two documents this, Sir William, that so far from drawing steadily out of this account and depleting it as a matter of fact in the calendar year 1926 the free surplus reserve was substantially increased?"—"Yes," replied Sir William, "from £99,000 to £208,000."

And that after drawing out £175,000?—I assume that though that statement does not show it. This is a specially compiled document, trying to show the true tax liability.

In case you do not know, the corresponding balance proof paper for the following year can't be found. It happens to be missing, but I think we can find it out none the less independently of that. Look at exhibit 61. In red ink you see the figure for surplus reserve £146,664?—That is in 1928.

That is right; I cannot do 1927 because they have not got the documents.

Sir John Simon, addressing the Judge, said he thought he might leave that particular aspect of the matter. He had some other documents which he was going to put, but Sir William had told the Court what inferences he drew from those which had been produced.

Mr. Justice Wright: "Yes, and, of course, Sir William fairly tells us he had not gone into this aspect of the case, because what his interest would be was ascertaining the current earnings."

Sir John Simon said he had really been considering whether or not he could do justice and at the same time save time by putting a more compendious question than one which he had intended to put. He thought he could do so. The question had regard to the 100 per cent. subsidiaries.

Turning to Sir William, Sir John said, "As you pointed out, these very important figures represented by the E.P.D. are really figures that are common to the Royal Mail Steam Packet Company and the subsidiary companies?"

Sir William: Yes, they were settled as a whole—as one unit.

It follows, therefore, that questions that I have been putting to you about E.P.D. and similar matters, though I have put them with reference to the Royal Mail Steam Packet Company, really are considerations that apply to the group?—I think that is a fair way to put it.

So I need only put this further to you. You have pointed out that dividends were paid by these 100 per cent. subsidiaries. Confining yourself to these subsidiaries, do you know that after paying these dividends the subsidiaries were left with very large reserves. I will, if you like, give you a figure?—I was going to say that generally the result of the knowledge I had is that nearly all Royal Mail Steam Packet Companies have still got in their books very large reserves.

And when you say "got in their books" let us have it quite clear, this is not a case where anybody suggests that they are not honest records?—Oh, no, not for a moment.

In 1926 these 100 per cent. owned subsidiaries according to the document before me had a total reserve of £1,150,000, and in the year 1927 £1,100,000?—That is the aggregation of the reserves appearing in the books.

Of the 100 per cent. companies only?—Yes. I am doubtful if the ships are worth the money they appear at in the accounts.

Mr. Justice Wright: Actually the existence of reserves depends on whether the assets are truly balanced on the other side?

Sir William: That is so.

Mr. Justice Wright: They are not free reserves, they are not immediately realisable.

Sir William: They are free reserves in the general sense, but it is all invested.

Mr. Justice Wright: All invested in ships?

Sir William: Yes.

Sir John Simon: You have had, Sir William, to consider with the holders of the second debentures whether or not their second debentures are covered by assets?—Yes.

I may take it, may I not, that with the appointment of the voting trustees, and the general publicity there has been, that for the time being at least there has been a depreciation in value if it came to a forced sale?—Oh, yes, undoubtedly.

Sir John Simon finished his cross-examination, and Sir Patrick Hastings then proceeded to question the witness.

"We have been told," said Sir Patrick, "that you conducted an inquiry into the affairs of the Royal Mail Steam Packet Company group."

Sir William: Yes, of a limited character.

And did that take you a very considerable time? Did your inquiry take some time?—Yes.

During that time did you ever ask Mr. Morland for any explanation of anything he either did or did not do in relation to his duties as auditor?

To this question Sir William replied "No," and added, "I did not but my assistants——"

Sir Patrick interposed by demanding "will you answer my question."

The Judge said the witness was answering the question, but he appeared to be desirous of adding something.

Sir William then said he did not meet Mr. Morland himself, but his assistant in the course of his work was in touch with Mr. Morland's assistant, and he (Sir William) was furnished with documents.

Sir Patrick: Did you personally ever ask Mr. Morland for any explanation, of any kind, of anything that he did or did not do? Sir William: No, I did not.

MR. A. T. CASON.

Mr. Arthur Theodore Cason was then called as a further witness for the prosecution.

Answering Mr. Eustace Fulton, he said that from 1918 until May, 1931, he was chief accountant of the Royal Mail Steam Packet Company.

Mr. Fulton: Were the company's accounts from 1918 kept in London under your supervision as chief accountant?—Yes.

Early in 1927 was a draft of the profit and loss accoun for 1926 prepared?—I think it was earlier than that.

What date do you put it at?—The rough draft are you referring to?

I am talking of the draft which followed upon the estimate which you got out just before ?—I should think some time in March.

Just look at exhibit 6, will you ?—Yes.

That document is described as " estimate 1926 " ?—Yes.

Is that the first draft that was prepared of the profit and loss account for that year ?—Yes.

That is the estimate, is it, of the company's trading, and does it show that you are looking forward to a possible deficit of £1,100,000 ?—Yes.

Which would be increased by another £200,000 on the payment of a 4 per cent. dividend ?

At this point Sir John Simon interrupted. Mr. Fulton, he said, had spoken of an estimate of the company's trading. The document contained sundry receipts, including interest on investments.

Mr. Justice Wright told Mr. Fulton that he ought to put the question precisely.

Mr. Fulton (to the witness): Is there shown in that document an estimate as to what the company's trading would be in the year ?

Sir John Simon (again interposing): I am sorry to object, but that is a leading question, and as I understand from what has been said, it would also be a misleading question. (Laughter.)

The Judge: It would be better for the witness to say simply what the document shows.

Mr. Cason: This document is an estimate of the trading of the company. The company is really 75 per cent. investment and 25 per cent. shipping, and therefore it is reasonable to take the document as a whole.

Mr. Fulton: And what does the estimate show ?—It shows a deficit of £1,100,000.

Which would be increased by £200,000, I understand. You have an ordinary dividend there put at 4 per cent.?—Yes.

How did you come to prepare that document, Mr. Cason ?—At the request of Lord Kylsant.

When you showed it to Lord Kylsant upon October 4th, 1926, what did he say to you, if anything ?—He asked me what unpublished reserves we had got and how we could meet the deficit.

When you showed the document to Lord Kylsant, were those figures on the right-hand side—unpublished reserves and other things—upon it ?—I cannot remember. I think that they were not.

The witness agreed that the figures in question included an item of unpublished reserves £600,000, and the total given was over £1,144,000.

Mr. Fulton: Looking just below those figures, you will find on the same side of the document some figures which are written smaller. Can you tell me whether those were written in at the same date or at some later date ?—At a later date.

Tell us what those figures represent.—Those are the details of the £600,000 unpublished reserves.

Mr. Cason explained the inclusion of a certain figure by saying that during the war the company ran certain ships on behalf of the Government, and what was shown was the balance which remained out of the allowances which were made.

Mr. Fulton: You have told us that Lord Kylsant asked you to ascertain what reserves there were. After you had ascertained them, did you communicate to him what you had found ?—Yes.

I notice an item " bonus shares from Nelsons." How did you come to put that there ?—Lord Kylsant told me that he was going to declare a bonus of £200,000 from one of the Nelson companies.

The deficit being £1,300,000, when you came to make up the profit and loss account, what did you take from those reserves, if anything ? How much was it ?—The figures were income tax £175,000 and E.P.D. £550,000.

What is the total ?—£725,000 on those figures, and the reserve fund is shown separately in the printed account.

Did you show that document to Lord Kylsant ?—No.

On whose instructions did you take those items from reserve and put them into the profit and loss ?—On Lord Kylsant's.

Does the same book that you have got before you contain also the balance sheet for the company as at December 31st of that year ?—Yes.

That is signed by Lord Kylsant as chairman and also by the secretary of the company ?—Yes.

Does it contain the auditor's report signed " H. J. Morland " ?—Yes.

The document that follows it is the final profit and loss account for the same year ?—Yes.

Just looking at the details of the profit and loss account which you have there in the final form as prepared, do you find against the items auditors' ticks ?—Yes.

Do you know of your own knowledge who was the person who dealt with those accounts and put those ticks upon them ?—I am not sure who made the ticks, the auditing was under the jurisdiction of Mr. McArthur, and I think it was one of his assistants who made the ticks.

Mr. Fulton observed that Mr. McArthur was one of Mr. Morland's assistants.

Continuing his examination of the witness, Mr. Fulton asked in what item were transfers from reserve shown in the profit and loss account.

Mr. Cason replied that the £725,000 which had been referred to was taken from the item of the previous year, sundry balances.

Sir John Simon: Might I just have that last answer again.

Mr. Justice Wright: He says they were taken from sundry credits that appear on the previous balance sheets.

His Lordship remarked that it was necessary to take note of how much of the evidence given by the witness was evidence against Mr. Morland, and how much was not.

Mr. Fulton then referred the witness to the printed annual reports of the company for the period 1921 to 1925. He asked him to look at the reports for 1921 and 1922, and suggested that in each of them in the profit and loss account there was set out on the right-hand side an item of profits for the year, including dividends and so on.

Mr. Cason agreed.

Mr. Fulton: You find the word " profit " being used in those two years ?

Mr. Cason: Yes.

In 1923 you find the words are the same except that the word " balance " has been substituted for the word " profit " ?—Yes.

In 1924 the words are unchanged as from 1923 ?—Yes.

Looking at 1925, do you find in that year after the words " allied and other companies " the insertion of the words " adjustment of taxation reserves " ?—Yes.

Answering further questions by Mr. Fulton, Mr. Cason said that in 1926 and 1927 the form of words used was unchanged as from 1925.

Mr. Fulton: On May 4th, 1927, was there a meeting of the board of directors held to approve of the profit and loss account for 1926 ?

Witness: Yes.

At that meeting Lord Kylsant was present, but I think Mr. Morland was not ?—No.

Now look at exhibit 13. Was that the document put before the Board which is in effect the final form in which it went before the shareholders ?—There might be some slight alteration.

That is the document which was put before the Board, subject to alteration ?—Yes.

Apart from the information contained in that document, was any other information given to the Board ?—Not in my presence.

Were you present at the whole of the meeting ?—While the accounts were being discussed.

Going now to year 1927, was an estimate prepared in the same way for that year as for 1926 ?—Yes.

I notice that at the top of the right-hand corner is the initial " K." Was it Lord Kylsant's practice to initial documents in that way when they had been before him ?—Yes.

That document now has figures in black and red upon it. Were they upon it when the document went before Lord Kylsant ?—No.

Which figures were upon it when he saw it?—Only the black.

When did you come, if you did, to write the red figures upon it?—The red figures are all at a later date.

How did you come to put them there?—I put them there as a check on what I had originally given.

Continuing, the witness said that the figure £382,905 covered three things. The income tax reserve of £200,000 was originally stated in the final figure of £208,205. His (witness's) final figure was £108,935. The profits on the sale of H. W. Nelson of £200,000 and depreciation were items that were not taken into account.

Mr. Fulton: Having got out the final figures will you look again at the memorandum you prepared for the auditors?

Witness: Yes.

Was that prepared in the same way as the one you have already spoken about?—Yes.

On the second folio I find there on the credit side two bonuses of the Nelson Company amounting in all to £300,000. Is that right?—No, it does not show that.

They are there?—Yes, they are part of the items interest on investments.

What happened about that? Tell us in your own way.—The Nelson lines—H. & W. Nelson and the Nelson Steam Navigation Company—each declared a bonus, £100,000 in one case and £200,000 in the other, and these were taken credit for in interest on investments.

In that year?—In that year.

In your estimate the one you have just produced was income tax reserve, &c., shown at £382,905. You have told me about it, and that the "&c." was in red?—Yes.

Did income tax reserve in that figure stand at £200,000?—No, at £120,000.

What happened then?—The other items which are just below the interest on investments include corporation profit tax, £32,905; excess profits duty, £230,000, which make up the £382,905. The actual excess profits duty was taken finally at £232,787 19s. 1d. Were those items taken from reserve and put into profit and loss?—Yes.

Upon your own motion or instructions?—Instructions.

From whom?—Lord Kylsant.

Now just tell me the company's practice with regard to depreciation.—The company's practice was to write off a ship after twenty years life. Looking at exhibit 14, I find there an item of £170,300 depreciation not already charged.

Why was that?—Because we had in the previous years written off more than the 5 per cent. depreciation.

Was that how you had it in hand?—We had in hand more than that.

In point of fact it appears that the £170,300 was not taken in?—Yes.

How did that come about—did you have any conversation with anybody about it?—It was not necessary.

Was there some discussion about that item?—I don't remember whether there was or not.

You have told me that with regard to the Nelson £200,000 that that sum was put into the books and taken out again. Was that done by anybody's instructions?—On Lord Kylsant's.

The witness was next referred to Journal E., and said he found an entry dated December 31st, 1926, with reference to interest on the £200,000. This was subsequently cancelled. On another folio under date December, 1926, investments in allied companies of £200,000 was again cancelled at a subsequent date. On folio 363 he found an item on the credit side under December, 1926, interest on investments, and again the sum of £200,000, and cancelled at a subsequent date.

Mr. Fulton then handed the witness an extract from the books of the company and asked, "Do you find there a profit on the sale of H. W. Nelson of £200,000 entered but not taken?"—Yes.

Perhaps you could tell us about the sale of H. W. Nelson—what was that transaction? Was it a sale to the Nelson Steam Navigation Company?—Yes.

With regard to both of these companies the whole of the shares were held by the Royal Mail Steam Packet Company?—Yes.

We have heard about the subsidiary companies. In fact, all the 100 per cent. subsidiaries were in the same position, namely, that the parent company held all their shares?—Yes.

Will you tell us now about the transactions by which H. W. Nelson was sold to the Nelson Steam Navigation Company—how that came about?—Lord Kylsant thought it desirable that the management company—H. & W. Nelson, Limited—should be owned by the Steamship Company. It was therefore put to the Board in that way and arranged that the holding of the Royal Mail Steam Packet Company should be sold to the Nelson Steam Navigation Company, so that it would be a self-contained unit.

How was the price fixed?—It was fixed at the par value of the whole of the shares which had been issued to the company.

In 1927 was a general balance sheet and profit and loss account prepared as before—have you the document that was put before the Court of Directors?—Yes.

And prepared in the same way as the others, showing the figures for the preceding year, 1926?—Yes.

Were you present at the meeting at which it was produced?—Yes.

In your hearing was anything said as to the movement from reserve into profit and loss?—No.

Mr. Justice Wright: Had the company made a profit on its trading? Was any question asked about that?—No, my Lord.

Was no question asked about the sundry credits or the adjustment of taxation reserve?—No.

Was no question raised on the balance sheet or the profit and loss account at all in your hearing?—Yes, in 1927 there was. One of the directors asked, "What do the auditors say?" and I said I had already seen the auditor.

Mr. Fulton: Who, Mr. Morland?—Mr. Morland personally. The auditor said there was no technical objection.

Was that stated by Mr. Morland, or not?—Yes.

Was there any further discussion?—No discussion on the accounts. Before this Lord Kylsant gave a short summary of how the 100 per cent. companies had been doing, but that had no connection with the account other than to satisfy the question which I understood had been asked at a previous Board.

The Judge: You didn't hear it?—I didn't hear it.

Mr. Fulton: You said something about Mr. Morland. Will you give us the conversation you had?—Before the accounts went to the Board I went to see Mr. Morland to see if there were any technical objections. I asked him that question.

Mr. Justice Wright: Technical objection to what? Did you just ask the question in that form, or did you say what the technical objection might relate to?—No, my Lord, I simply said "technical objection," and put the document before him. It was particularly in relation to the Nelson Line bonus.

Mr. Fulton: Did you indicate any part of the document to him before asking the question?—I pointed out the item.

Mr. Fulton: Reserves?

Sir John Simon, interrupting: No, no.

Mr. Justice Wright said that the question could not be put in that form.

Mr. Fulton: Just point to the part of the document you indicated to Mr. Morland.

The Judge: What document was it you were showing to Mr. Morland?—I haven't it, I am sorry to say, but the document I showed to Mr. Morland contained figures which particularly referred to the bonuses from the Nelson Company.

And if I followed you rightly you asked if there were any technical objections, and then he gave you an answer?—Yes.

What was it ?—Simply that there were no objections.

And then at the meeting some director came to ask if there were any technical objections ?—No, my Lord. All that the director said was, "What did the auditor say ? "

Had that reference to anything that had been said at the meeting ? How did he come to say, " What did the auditor say ? " He simply said that quite suddenly ?—Yes.

And you repeated what Mr. Morland said ?—Yes.

And did the discussion continue on that, or did it stop ? —It stopped.

Mr. Fulton (continuing the examination) : Well, you showed that document to Mr. Morland. What did you say ?—I said, " I don't like it."

What did he say to that ?—I understood him to say, " Nor I."

Looking back to exhibits 19 and 20, were those documents actually before Lord Kylsant at that meeting ? They bear his initial upon them.—Yes, after those documents had been put before the Board in the ordinary course they go before the auditors, and in their final form they bear upon them Mr. Morland's signature. I have got before me the final form of the balance sheet for that year and the profit and loss account. With regard to each of these years, while I was present the accounts went before the directors, but no information was given to them about these movements in the profit and loss account. I was also present in the years 1921 to 1925.

Was any information of that character given in your presence at any of those meetings ?—No.

Mr. Justice Wright : Did none of the directors ever ask if the company was earning any profit or not ?—No, my Lord.

Sir John Simon : I did not catch the witness's answer. I should like to know what it was.

Mr. Justice Wright : I asked him whether any of the directors had ever asked if the company was earning any profit or not, and his answer was " No."

Sir John : I shall ask him a question about that later on.

Mr. Fulton : Were you in the habit of keeping a summarised document of the details of profit and loss covering a number of years ?—Yes. I produced exhibit No. 21, which was a copy of the document I originally had.

That shows the surplus or deficit each year. Is that right ?—Yes.

Special debits in each year, if there are any ?—Yes.

And special credits in each year, when they arise ?—Yes.

This document begins in 1920 and ends in 1929 ?—Yes.

Was that a document you kept for your own private information ?—Yes. It was taken by Mr. McArthur to Mr. Morland, but whether he saw it or not I don't know.

At any rate, it was at the disposal of Mr. McArthur ?—Yes, it was, up to the end of 1926.

The Judge : Then afterwards you filled in the other three years as the years came round ?—Yes.

Mr. Fulton : From the years 1921 to 1927, to go no further, were there in each year special credits taken into account ?—Yes.

Can you tell me whether Lord Kylsant was aware of that ?—Yes.

Did he approve of it, or no ?—Yes.

Continuing, the witness stated that in April, 1928, he went away for his holiday. There was a document dated May 13th, 1926, which was headed " Memorandum from the Accountant." It stated that Mr. Morland had signed the balance sheet subject to approval of the alterations of profit and loss account as per rough proof attached.

Mr. Fulton : Can you tell us what the contents were ?—Yes, it contained the alteration in the wording with reference to the item of dividends of allied and other companies less depreciation of freight, &c.

Take 1922, do you find the same wording in the profit and loss account for that year, except that the word in that year is " profits ? "—Yes.

So that in these two years the wording is exactly the same, except that in 1923 you get the word " balance," instead of " profit." Can you tell us how that came about ?—Lord Kylsant required it to be altered.

Did you have any conversation with him as to why it should be altered ?—I can't remember any.

You can remember that it was subject to his direction that it was changed ?—Yes.

I just want to deal with the question of the exchange of cheques between the Nelson Steam Navigation Company and the Royal Mail Steam Packet Company. I don't want to go into details as we already have them. Can you tell me under whose instructions it was done, if anybody's ?—Under the instructions of Lord Kylsant.

Mr. Fulton : Will you now look at the letter dated May 18th, 1926.

Sir Patrick Hastings : I understand that the evidence my friend is now calling does not affect my client.

Mr. Justice Wright : You are quite right. I was going to say something on this myself.

Mr. Fulton : All the evidence following relates to the prospectus charge in which Mr. Morland is not concerned.

Referring to the letter of May 28th, 1926, addressed to the Chairman of the Royal Mail Steam Packet Company, the witness said that this was from Barclays Bank in reference to their renewing the arrangement for the continuation of the company's overdraft of £300,000 for a further period of six months on the same terms as hitherto.

Mr. Fulton : You will see it is quite clear that there is writing in manuscript in pencil at the bottom of the document with the initial " K " with reference to an application to the bank to make the overdraft £500,000 ? —Yes. Was that written subsequently to the date of the letter ?—Yes, about six months afterwards.

On December 3rd, 1926, continued the witness, a letter was addressed to Lord Kylsant signed by Mr. Fisher, general manager to Barclays Bank head office informing him that it had been agreed to grant the Royal Mail Steam Packet Company an additional £200,000 overdraft, making £500,000 in all, and that they gathered it was the Chairman's intention to pay the additional advance in three months from the proceeds of a public issue. There was another letter dated March 18th, 1927, addressed to the secretary of the Royal Mail Steam Packet Company which bore the initial " K," and in reference to the same matter.

Mr. Fulton : The next document to which I wish to draw your attention was called " Memorandum to the Chairman." Was that put before Lord Kylsant to your knowledge ?—Yes.

You sent the original yourself to him ?—Yes.

The witness referred to a number of other letters with regard to the £500,000 overdraft, and said he noticed that there was an extension for another three months granted.

Did you go for your holiday in 1928 towards the end of May or thereabouts ?—Yes.

So far as you knew had anything been done then in relation to the prospectus or the issue mentioned ?—No.

When you came back on June 11th, or about that date, did your assistant, Mr. Lewis, speak to you and show you some figures ?—Yes.

When you saw that document was it in its present form, because I see some pencilled words added at the top ?—The pencilled figures were not there.

Asked by Mr. Fulton how pencil figures came to be added to the draft, witness said that they were in his handwriting. He was called down to Lord Kylsant's room in connection with the prospectus. Witness told Lord Kylsant that they did not use the word " profits " in their accounts, but said " balance."

And what did he say ?—He altered the wording in the paragraph at once. It was the draft prospectus.

Did you have any other discussion with Lord Kylsant with regard to the preparation of the prospectus ?—No.

Witness agreed that the Royal Mail Steam Packet Company managed the Meat Transport Company and Lord Kylsant was chairman of that concern.

Were the accounts of that company under your supervision as an accountant ?—Yes.

Witness then produced a summarised profit and loss account of the Meat Transport Company from 1918 to 1929. That showed a surplus or a deficit where there was one. It showed that the transfer from reserve was £25,000 in 1926 and £25,000 in 1929. The transfer from the taxation reserve in 1926 was £37 500 in 1927 £25,251,

and in 1928 £8,000. The transfers were brought forward on the instructions of Lord Kylsant, and they appeared on the balance sheet and were passed by the Board. Witness also produced the signed balance sheets of the company for 1926 and 1927.

Was Mr. Morland dealing with the accounts of that company on behalf of Messrs. Price, Waterhouse & Co., who were the auditors as a firm ?—Yes.

Who dealt with the accounts on behalf of that firm ?—As a rule, Mr. Morland.

In these two particular years, who dealt with these accounts ?—They were dealt with on behalf of the firm by the same staff who dealt with the Royal Mail accounts, and the signature is obtained of the firm, and whichever partner was available would sign the account.

Who signed either of these documents ?—In 1927 the signature is Mr. Morland's ; I am not sure whose the signature is in 1926.

It only appears as Price, Waterhouse & Company ?—Yes.

Witness also produced the Memorandum and Articles of Association of the company, together with the minute book. He had prepared a document going back for two years prior to 1920, and he had also examined the books of the company to ascertain what the drawings of Lord Kylsant were in respect of his half per cent. commission. Mr. Cason said that he had prepared an account of the drawings for many years.

Questioned with regard to the drawings, witness said that in 1920 Lord Kylsant drew £48,377. In 1922 the figure was £23,376, in 1923 £26,045, 1924 £26,400, 1925 £27,165. In 1926, when the dividend fell to 4 per cent., Lord Kylsant drew £3,000. In 1927 he drew £26,842. In 1928 there was a dividend of 5 per cent. declared and witness made provision in the books for Lord Kylsant's half per cent. commission.

Did he in fact draw the amount he was entitled to ?—No.

Why ?—He did not wish to.

And did not in fact draw it ?—No.

Witness said that in 1929 there was in fact no dividend declared and Lord Kylsant's drawing did not arise.

Witness was then cross-examined by Sir John Simon, who asked : At meetings of the Board, the full Board, were voyage accounts produced ?—Yes.

The voyage accounts appear to have been produced week by week or month by month ; which was it ?—Whenever the Court sat.

Did you have a particular line of ships, and did you have the figures showing whether there was a deficit or a surplus on the voyage, and how much the voyage would cost, and the figures for the previous year, so that they could be compared ?—That does not embrace the whole of the company's fleet, only the voyages which are run transatlantically.

What would be omitted ?—The ship's lying-up, for one thing.

They were not likely to be earning profits, were they ?—No.

Well, the whole Board had before them the summary of the voyage account, stating, in the case of each separate ship, whether the result was a deficit or a surplus and how it stood with the voyage of the previous year ?—Yes.

In reply to the Judge, witness said that he was not present at the Board meetings except when the accounts were discussed. He thought perhaps the Secretary, who was to be called to give evidence, could state exactly what happened at the meetings.

THIRD DAY'S PROCEEDINGS.

Mr. Arthur Theodore Cason was further cross-examined by Sir John Simon, who remarked, "One answer you gave yesterday. I would like to say, or to remind you of it at once, a question you were asked about the Nelson matter of £200,000. I am looking at your evidence before the Lord Mayor at the Guildhall and I see that you were asked a question about it, and this is what you said before the Lord Mayor : 'It was decided that the Royal Mail Steam Packet Company should sell H. & W. Nelson, Limited, to the Nelson Steam Navigation Company. Lord Kylsant decided that, with the approval of the directors' ? " Witness replied that that was what he said.

And that is correct ?—Yes.

And the members of the jury may take it that it was not a matter which Lord Kylsant decided alone, but a matter brought before the Court and approved by the directors ?—Yes, on the initiative of Lord Kylsant.

You are not suggesting that the decision was merely his decision ; it was approved by the Board, I take it ?—Yes.

The Judge : Which year does this refer to ?

Sir John Simon : It comes in 1927.

Counsel : When you spoke yesterday, your answer was in relation to an entry in the book, afterwards struck out, and the year of that was 1926 ?—Yes.

The matter that was carried through, and carried through with the approval of the directors, was in 1927 ?—Yes.

Witness went on to say, in reply to further questions, that it was in the year 1927 that the one Nelson Company provided £200,000, and the other company £100,000.

There is one further question I want answered on this subject. Tell me this. Had the two Nelson companies the money to pay the £300,000 in 1927 ?—Yes.

Nineteen twenty-seven was a year when you had some conversation with Mr. Morland about something being technically correct ?—Yes.

It is called a bonus of £200,000 ?—Yes.

See if your understanding of that is the same as mine. That would mean that the Nelson Company had at that time, having done exceedingly well, a very large fund which was available for distribution, and it might have been disposed of by declaring a higher rate of dividend ?—Yes.

And it declared an ordinary rate of dividend and the rest was declared as a bonus ?—Yes.

It was never more than a name for a good lump of profits paid over as one thing ?—Yes.

And this question does arise when the Nelson Company has shares in its books, whether it is technically right to pay over a profit which it has made by calling it a bonus in one lump sum. That question does arise ?—Yes.

It is not declaring a dividend in the ordinary way, but handing over a lump sum bonus ?—Yes.

You satisfied yourself that that was technically quite correct ?—Yes.

Witness agreed that the shares in the Nelson Company were owned by one shareholder. It therefore did not matter whether they divided the lump sum of profit in a lot of little bits or whether it was handed over as a lump sum. As witness understood the matter, the £200,000 of the one Nelson company was distributable profit. Instead of the distributable profit being distributed as a dividend of so much per cent., it was distributed in part by dividend and in part by a lump sum.

And in the same way, the other Nelson company paid over the £100,000 to the shareholders, the Royal Mail Steam Packet Company, as a lump sum ?—Yes.

Now I should like to ask you to go back with me a little because for some purposes in this case in connection with the prospectus it will be necessary for us and the jury to carry our minds back to the year 1911. You told us yesterday that you had been the chief accountant of the Royal Mail Steam Packet Company since 1913, and you said that before 1913 you had been assistant accountant. So I have in the witness box a gentleman who at the time was connected with the accounts of the Royal Mail Steam Packet Company from 1911 down to the time when you retired ?—Yes.

Are the figures at the bottom of the exhibit which you have in your hand setting out what dividends on the ordinary stock have been paid—are the figures correct ?—Yes.

Was it during your time the policy of the Royal Mail Company to endeavour to equalise dividends, that is to say, to pay less than would have been legitimate in

prosperous times, so as to have a reserve in undistributed profits in less prosperous times ?—Yes.

The Attorney-General took exception to that question, and Sir John Simon said he would put it in another way. He asked: Looking through this series of 22 years, and observing the figures of dividends, was the practice of the company in more prosperous years to pay a smaller dividend than would have been possible, so as to have undistributed profit in years that were less profitable ?—Yes.

See whether you can help to confirm these figures. The rate of dividend in 1911 was 5 per cent. Am I right in my information that in order to pay that dividend of 5 per cent. £45,000 would be taken from profits ?—Yes.

It would be £45,000 gross ?—Yes.

In the year 1911, was there £45,000 of profits available for distribution ?—Yes.

How much more profit had the company in 1911 which it did not distribute ? How much did it add to the reserve fund ?—£40,000.

How much in that year in addition did it pay to the insurance fund ?—£40,000.

So that after it had paid all prior charges and all its preference dividends, and after it had paid 5 per cent. on its ordinary shares in the year 1911 it increased its published reserves by £80,000 ?—Yes.

If £45,000 is enough to produce a dividend of 5 per cent., £80,000 would be enough to produce 8.8 per cent. ?—Yes.

And if we add them together in the year 1911, which was a prosperous year, if the R.M.S.P. had not followed the conservative policy of putting £80,000 of its profits aside and not distributing it, it might have paid a dividend of 13.8 per cent. ?—Yes.

In reply to further questions, witness said that for the year 1912, as the members of the jury could see from the prospectus, the rate of dividend was 6 per cent. That dividend would call for approximately £87,000.

And is it a fact that all Lord Kylsant and the Board did in 1912 was to distribute to the ordinary shareholders, by means of this dividend, £87,000 ?—Yes.

Could you tell me now much in that year was available for distribution if nothing more had been carried to reserve. I think you will find that in that year there was carried to the published reserve fund a further sum out of profits of £130,000 ?—Yes, that is so.

And there was also carried to the insurance fund a sum of £40,000 ?—£47,000 is the figure.

The result being that there was available in that year, not £87,000 but £257,000, over a quarter of a million ?—Yes.

And that, as I work it out, means that in the year 1912 Lord Kylsant and the Board might have distributed not 6 per cent., but 17.7 per cent. ?—That is so.

In 1913 the dividend in fact declared was 6 per cent. ?—Yes.

That involved, as I make out, approximately £151,500 ?—Yes.

In that year, as I follow it, £10,000 more was put to reserve ?—Yes.

Do I understand rightly that any increase at the end of the year shown in the balance sheet of the insurance fund means that that is in excess of what has been required to meet claims ?—Yes.

In that year it would not have justified a dividend of 7 per cent. ?—No, 6¼ per cent.

Now in 1914 no dividend was paid ?—No.

Witness agreed that no money was distributed in that year, but it was necessary to withdraw from the reserve fund £200,000. In 1915 the money which had been withdrawn from the reserve fund was put back again.

And having kept things level in very difficult times, it was decided to restore the reserve fund again ?—Yes.

Was it also possible in 1915 to pay a dividend of 6 per cent., and was that done ?—Yes.

And that, as I make it out, that called for a sum of £198,000 ?—Yes.

And in addition £200,000 was put back into the reserve fund, and was £58,375 put into the insurance fund or added to the reserve of the insurance fund ?—Yes.

With the result that instead of paying 6 per cent. the company might in that year have paid 7.8 per cent. ?—Yes.

There is rather a striking contrast here. Do you realise that in the year 1915 Lord Kylsant and the company put aside out of distributable profits to reserve more than the total amount which they distributed in dividends ?—Yes.

Putting something aside for a rainy day, in fact ?—Yes.

Witness went on to say that in the year 1916 the amounts available for dividend could have paid 13 per cent. when in fact 7 per cent. was paid, and in the following year, 1917, the dividend could have been 13.4 per cent., in 1918 11.8 per cent., in 1919 18.5 per cent., and in 1920 17.7 per cent.

It is quite plain that the practice of this company was this: that over a series of years when the cycle of trade gave prosperity, full advantage of that prosperity was not taken, but very large sums were set aside lest a worse day should come ?—Yes.

And do you agree that such sums are set aside in order that they might be used when bad times arrive ?—Yes.

Witness agreed that in 1921 when the dividend paid was 6 per cent. the divisible profit might have justified 9.4 per cent.

Sir John Simon: If in the year 1921 nothing more had been put to reserve, the result would have been that instead of their being only 6 per cent. the dividend might have been 9.4 per cent ? Let us see what the situation was when the year 1921 began. In the previous ten years there had been added to the reserve funds, as I have mentioned, very large sums ?—Yes.

And in those ten years there has been an increasing free surplus on the insurance fund built up ?—Yes.

In 1921, nothing was drawn from the published reserve fund ?—No.

Was anything withdrawn from the insurance fund ?—No, I think not.

Was there in fact £172,636 added to it in that year ?—Yes.

And in that year some special credits came in and those special credits, together with the trading of the year, allowed 6 per cent. dividend ?—Yes.

In fact if £172,000 more had not been put into the insurance fund it might have been 9.4 per cent. ?—Yes.

In the year 1926 was there a drawing out of the published reserve fund of £150,000 ?—Yes.

Although in the same year the insurance reserve fund increased by £44,404 ?—Yes, that is so.

So when you come to the year 1926, if you did not take advantage of the conservative practice of previous years, the dividend available could not have been 4 per cent. ?—No.

But only just under 2 per cent. ?—That is so.

His Lordship remarked that as far as he had followed the case there appeared to be certain years in which there were no profits. There were no trading profits of the Royal Mail Steam Packet Company, although there were certain profits from investments.

Sir John Simon said that there were two sources. There were payments—dividends from investments—and sums which might have been expected to be wanted to meet claims such as Inland Revenue and which were found in a given year not to be required. That really was the same thing as an addition to the profits for the year. If from the beginning of the year it was ascertained that no claim would arise, then, *pro tanto*, the sum set aside was available for profit and distribution. An even more important point, strange though it might appear, was that in the difficult years the company was receiving from the Revenue actual accretions.

The Judge: Yes, that appears.

Sir John Simon went on to state that he put a document before the Judge and the jury as he realised that it would be more convenient for them to follow a tabulated statement. He was not seeking to exclude from the case what had been called the E.P.D. and income tax credit. He was not suggesting that they came into the document now before the Court. That document was limited solely to the two published reserves. One was reserve fund and

the other the free excess which was continually growing under the heading of "Insurance." In the table an endeavour was made to set out year by year, from 1911 onwards, the rate of dividend paid by the company together with the actual amount needed for that purpose. The dividends paid were set out in the prospectus. The document also showed the increase in the published reserve funds. Turning to the witness, Counsel said, "Each year from the profit and loss account, instead of taking this amount and using it to swell the dividend, it has instead been added year by year to the reserves?"—The witness replied in the affirmative.

Do you agree that the insurance fund is properly described as a reserve fund?—Yes.

In 1912 a sum of £170,000 was carried to the published reserves, whereas only £87,000 was used to pay a dividend?—That is right.

If there has not been from 1911 onwards this constant increase in the reserves, the dividend that might have been paid year by year would have been more?—Yes.

The document also shows the total amount of the insurance fund at the end of each year?—Yes.

I would call attention to the fact that in the course of the period from 1911 to 1927 it has grown from £300,000 to £1,311,759?—Yes, that is right.

In the balance sheet of 1927 it appears at £1,311,000?—Yes.

The Judge inquired how much, by way of dividend, could have been paid if the amount added to the reserves, including the insurance fund, had been utilised for the purposes of paying dividends.

Sir John Simon said he had not the particulars in front of him, but it could be ascertained. He pointed out that in the earlier years, to which he had been referring, very large dividends could have been paid. In the later years the dividends which could have been paid would have sunk.

Turning to the witness, Counsel said, "This document does not contain on the face of it any of those sums we have heard of in 1926 and 1927, which were called 'Income Tax Reserve' and 'E.P.D. Reserve'?"—No.

Is not the reason for that that the sums which you find in those ledgers were really what I may call invisible undistributed profits. They were put aside and they might have been needed, contingently, to meet a liability?—Yes.

When it turned out that they were not wanted to meet a liability, they became undistributed profits?—Yes.

Am I right when I say that those income tax and E.P.D. figures were over and above the reserves mentioned in this document?—Yes.

Am I right when I say that these sums for income tax and E.P.D. have all been credited out of undistributed profits?—Yes.

The position is that when in 1926, for example, there is brought in for that year £175,000 from the income tax account, and £550,000 from the E.P.D. account, those sums have all been provided out of undistributed previous profits?—Yes.

Assuming when they are brought into the profit and loss account and distributed that they are free, there is no reason known to you why you should not distribute undistributed profits which are free to be distributed?—No.

Replying to further questions, the witness said he was not in Court when Sir William McLintock gave his evidence, and Sir John Simon said, "In the course of his evidence, Sir William McLintock had pointed out to him, and agreed, that in fact £175,000 income tax brought into the profit and loss account for the calendar year 1926 might be regarded as made up of sums which were received in 1926."

The witness said he was not clear on that matter, and Counsel then handed him a summary of the income tax reserves and called attention to an item of £121,237, tax deducted from dividends paid. Counsel pointed out that that meant that in the course of 1926, when dividend warrants were prepared, the company deducted the proportionate amount of income tax, and did not pay the shareholders the gross declared percentage.

The Judge: Tax is deducted from the dividend paid. That means that the company enters 5 per cent. as having been paid, but actually pays 5 per cent., less tax, and therefore credits itself with the balance.

Sir John Simon: It keeps what it deducts.

The Judge: It credits itself, and rightly credits itself. It is a deduction it is entitled to enter.

Sir John Simon: It is what the law calls the proportionate amount. He went on to state that it sometimes happened that in a good year the company received more than it had to account for to the Revenue. In other years it might get less. That credit of £121,000, to which he had referred, arose from the fact that in the year dividends had been declared and warrants posted. There was also a sum of £5,170 cash obtained from the Inland Revenue as a refund in that year. An additional £70,000 in 1926 came from the Revenue in view of the fact that the Royal Mail Steam Packet Company was not making the profit it had earned in previous years.

The witness agreed that that statement was correct.

Those three sums of £121,000, £5,000 and £70,000 are free credits which arise in the year 1926?—Yes.

They amount to a total of £196,000?—Yes.

If you are fortunate enough to get back from the Inland Revenue something under E.P.D. account you will have to account to them for rather more in the way of income tax than you had hoped to do?—Yes.

It is an advantage to the company on the whole, but they have to account for income tax on the difference?—Yes. Witness went on to state that the deduction in 1926 amounted to £13,000, and in 1926 the repayment was £180,000. It therefore seemed to follow that £180,000 arose out of the year 1926 in the income tax account. In that year £175,000 was transferred from the income tax account to the profit and loss account.

As a matter of fact, at the end of the year 1926, there was a larger credit balance in the income tax account than there was at the beginning?—Yes.

It is obvious that it is not a case of depleting some ancient reserve to transfer in 1926 sums which have arisen within the year 1926?—That is so.

Sir John Simon said that he desired to address a series of questions to the witness on a very long document which had previously been produced. It was, in fact, one of the first pleasures in the case which was introduced to the jury. (Laughter.) It might be described as "a panoramic view." The first thing one noticed about the document was that in point of time it did not go so far back as the table he had produced, or as the prospectus. The latter went back to the year 1911. He gathered that the witness had spent a large portion of his professional life in very close contact with shipping, and asked, "Have you ever heard of the view entertained in that branch of commerce, amongst others, that there is what is sometimes called a cycle of trade?" The witness replied, "Yes."

You are not professing to understand it, but it means that experience goes to show, in connection with such a thing as the great shipping industry, that you do not get one good twelve months followed by one bad twelve months, but you get spread over a certain number of years a period of prosperity, a boom if you like, followed unhappily by a period which is one of depression. A sort of graph?—Yes.

Counsel: There were some very prosperous years prior to 1920?—Yes.

Years in which prudent and conservative management would suggest that you should set aside a portion of your earnings for the year rather than spend it all in those times of prosperity?—Yes.

And it becomes, does it not, a matter of very great importance when one is watching the general trend to see that there are indications on the figures which might suggest some return to greater prosperity?—Yes.

Look for a moment at the published accounts of the Royal Mail Steam Packet Company for 1926, and turn to the directors' report. It is there stated, "For the first four months of 1926 there was a considerable increase in the quantities of outward cargo compared with the

corresponding period of the previous year." Is that true ?—Yes.

That meant that British exports were going up ?—Yes. I am not responsible for this report.

I dare say you remember what happened in the month of May, 1926 ?—The general strike.

This indication of recovery was necessarily uncertain and speculative ?—Yes.

At any rate, the early part of 1926 had shown a most definite tendency to improve, and there was a considerable increase ?—Yes.

His Lordship said it would not be of any use for the witness to attempt to answer questions unless he really knew the answer. It appeared, however, that, so far as Counsel had gone, they were matters of common knowledge.

Sir John Simon said that one would suggest that the gentleman who was the chief accountant and whose sole duty was to keep the records of the company's proceedings might perhaps have known a little more.

The Judge pointed out that the witness only dealt with figures.

Counsel: Would this that is referred to here, this reference to the improvement at the beginning of 1926, be reflected in the voyage accounts which went before the Board ?—Yes, but it only refers to outward cargo, and not to the whole business.

Assuming that to be correct, you would see the voyage account, and if voyages were becoming more profitable, that would be reflected in the voyage returns before the Board ?—Yes.

Counsel next referred to a document which, he stated, showed a deficit in 1921 of £900,000. By 1925 it was £570,000. The running expenses in one year were shown at £880,000, in the next year they were £915,000, and in 1922 were £922,000. The deficit dropped in 1926 to £540,000, and in 1927 to £334,000. He added that in fact as they now knew, in 1929 there was another severe drop and, of course, the years 1930 and 1931 were "off the map." Of course, no one in 1926 or 1927 could know the state of affairs which would exist in subsequent years. In the reports of the company the word "profit" was not spelt "prophet." (Laughter.)

Sir John Simon then produced a letter addressed to the witness from the Inland Revenue regarding the allowance for E.P.D. The letter was dated March 7th, 1925, and stated, "It appears that the adjustment of your company's liability is still so far from settled that I am afraid that nothing can be done in the way of approving a further interim repayment at present." On May 18th, 1927, more than two years later, the Inspector of Taxes in the City wrote another letter regarding the settlement of the E.P.D. payment. That letter stated, "Final figures have to-day been seen, showing that the balance of E.P.D. to be repaid is £20,067. It is proposed to set this amount off against the over-repayment of income tax." The letter further stated that the amount of E.P.D. repaid in 1926 amounted to £1,313,095. There were three repayments in 1926 and the last three were "constructively," which meant they were set off against something else.

You could not, having those letters in mind, have told anybody that the E.P.D. was settled in 1923 ?—No.

The witness was then cross-examined by Sir Patrick Hastings, who said he wanted to know what practice was followed with regard to the yearly audit of the company's accounts. He suggested that every year, and during the year, the books of the company were kept by the regular accountancy department of the Royal Mail Steam Packet Company under the witness. The witness agreed, and said that about the month of April in each year the clerks of Messrs. Price, Waterhouse & Co. came in to check the accuracy of the books. His department prepared a balance sheet and a profit and loss account. The auditors' clerk checked the books after the account had been prepared.

The Judge: You prepared your balance sheet, and then the clerks came in ?—Yes.

Sir Patrick Hastings: Up to that point Mr. Morland would not come to the office of the Royal Mail Steam Packet Company at all. The representative of Messrs. Price, Waterhouse & Co. would check your figures, and you and your department would prepare a profit and loss account ?—Yes.

The next thing that happened was that the profit and loss account prepared by you would then go before the board of directors ?—No.

The Judge: Before Mr. Morland came on the scene ?

Witness: Yes, before Mr. Morland came on the scene.

Sir Patrick Hastings: After that document was approved by the board of directors, then Mr. Morland would attend at the office, go through it, and, if he thought proper, certify it ?—After his staff had checked it.

His Lordship said he understood that the practice was for the auditors not to come on the scene at all until after the account had been prepared by the witness's department. The balance sheet and profit and loss account were drawn up and put before the Court of Directors, and approved by them. Then the assistants of Mr. Morland came on the scene.

Sir Patrick Hastings: What happened in 1925, and how did the words "adjustment of taxation reserve" come upon the balance sheet in that year in the profit and loss account ? Did Mr. Morland come to the office, and were there present, in addition to Mr. Morland, Mr. Lewis and yourself ?—Yes.

Who was Mr. Lewis ?—He was my assistant accountant.

Had the profit and loss account, as well as the balance sheet, been before the Board, and you had it to hand to Mr. Morland ?—Yes.

Did Mr. Morland in that year state to you and Mr. Lewis that in his view the moment had arrived when it was necessary to indicate in the profit and loss account that the balance was arrived at after recourse to the E.P.D. reserves ?—I don't remember that Mr. Morland himself said that.

Let me see if I can remind you. Take this document in your hands. That is an original document. So far as it is printed, did it contain the items which are brought into the profit and loss account for the year 1925 with no printed figures ?—Yes.

Has someone written, in ink, the figures which appear in the profit and loss account ?—Yes.

Who wrote those figures ?—I did.

They are written in red ink ?—Yes.

On that print, which had been before the directors in 1925, was there any reference to the expression "adjustment of taxation reserve" in print ?—Not in the print.

The document which had been before the directors is the printed document ?—Yes, but it is in a slightly different form.

The printed words are precisely the same as the printed words which appear in the final document without the words "adjustment of taxation reserve" ?—Yes.

Has somebody written in, in that document, the words "adjustment of taxation reserve" ?—Yes.

Is it written in ink or in pencil ?—In pencil.

In whose handwriting is it ?—I think it is Mr. Morland's.

Have you the slightest doubt that at that meeting between yourself, Mr. Lewis and Mr. Morland, in the year 1926, Mr. Morland said, after perusing the balance sheet, which was put before the directors, that, in his opinion, the time had come when the notification that the E.P.D. reserve was being drawn upon should be indicated to the shareholders ?—I do not remember dealing direct with Mr. Morland in this connection, but there is no doubt that it is Mr. Morland's correction.

It was made in your presence, wasn't it ?—I do not remember it.

Do you notice that it is not even put in the right place in the balance sheet ?—Yes.

Mr. Morland wrote in, in pencil, "adjustment of taxation reserves" ?—That is so.

Does not that bring it home to your mind that it was done at the meeting between you, Mr. Lewis and Mr. Morland, and that he said something to this effect, that in his view an indication must be given now to the shareholders that the E.P.D. reserves were to be called upon, and he there and then, in pencil, wrote it out in front of you ?—I am sorry, I have no actual recollection.

If Mr. Morland tells us that was so, you would not be in a position to dispute it?—No.

Is it within your knowledge that Mr. Morland never saw Lord Kylsant at all on these occasions at any time?—I think he did at times.

I must ask you not to say you think. There were some other companies in which Mr. Morland was also auditor?—Yes.

In connection with these accounts of the Royal Mail Steam Packet Company, I suggest that never did Mr. Morland see Lord Kylsant at any time. Are you able to confirm that, or don't you know?—I do not know.

You said yesterday, speaking about the time when you saw Mr. Morland regarding the bonus, and asked him whether there was any objection to it, you stated, "I do not like it," and you understood him to say, "Nor I"?—Yes.

I do not quite know what you mean by "You understood him to say." Supposing Mr. Morland tells us that he never either formed a view or expressed any view about the matter, are you prepared to deny it?—I should say he was mistaken.

You are not sure whether he did say "Nor I," or not?—I cannot give you any help.

You said, "I understood him to say, 'Nor I.'" Does that mean that you may have misunderstood him?—It is possible.

Sir Patrick Hastings then referred to property which the company had sold, and the witness agreed that an item of £90,000 represented sales of properties in Barbadoes and this country.

The Attorney-General then re-examined the witness, and called attention to the document which had been produced by Sir John Simon, and also the accounts of the Royal Mail Steam Packet Company, going back to 1911. The document produced by Counsel for the defence, he said, showed that in addition to the payment of £45,000 in dividends, £80,000 was transferred to reserve. The accounts of the company for that year showed on the debit side of the profit and loss account what the company was doing with that money. There was an entry of "insurance fund account, transferred to credit £40,000," and also "reserve fund transferred to credit £40,000." He asked the witness whether anyone, looking at the accounts for that year, would see plainly on the face of the document that the company had put aside £80,000 to its reserves. The answer was "Yes."

Would you turn to the report of the directors. That states "after making provision for depreciation, transferring £40,000 to the reserve fund, £40,000 to the insurance fund, and making the payment of the dividend on the preference stock, the Court recommend a dividend of 5 per cent., less income tax, to be paid on the ordinary stock"?—Yes.

Of course, for a company like this, the insurance fund is an important matter, is it not?—Yes, if you take some of the risks.

If you are going to write in the market, it does not matter whether you have it or not, but if you are writtng some of your own risks, you must have a fund?—Yes.

His Lordship said he understood that the practice of the company was to insure 100 per cent. against total loss, and 75 per cent. against other losses with outside underwriters. That would not come into the insurance fund at all. The premiums paid to underwriters would be an ordinary disbursement of the company.

Witness: In the earlier years it was dealt with in that way. In later years a transfer has been made, and the premiums have been deducted against the fund.

The Judge: As I understand, you kept an account of your fund, and that would show the amounts that you have appropriated to the insurance fund and the amounts paid out?—Yes.

The Judge: But you always kept the surplus, and it was added to from time to time?—Yes.

The Judge: Why did you do that? Do you know? Was it to guard against the possible contingency of some very heavy loss or losses occurring which you insured yourself, or was it simply as an extra reserve fund?—The practice was to charge a certain percentage in the voyage accounts which more than covered the premiums which were paid out, and more than covered the risks which we had to meet.

The Judge: They more than covered the losses you had to make good?—Yes.

The Judge: And the result was that there was a gradual accumulation?—Yes, my Lord.

The Attorney-General asked whether the appreciation of the insurance fund was due to a deliberate intention to increase it, or caused by the fact that the company took a certain percentage, and credited that amount constantly. He understood that the company would debit every voyage account with a certain amount for insurance. The witness said that was correct.

How did you arrive at the figure?—I took a percentage.

A percentage of what?—Of the book value, but generally of the insurance value. In most cases the insurance value was higher than the book value.

What percentage was it?—Three per cent. until recently. Three per cent. is much too high.

Too high?—Yes, now.

The Judge: The cost of repairs is not what it was?—That is so.

The Attorney-General: From the beginning to the end, and from 1911 onwards, was the 3 per cent. the figure that was always adhered to?—Yes, until a good deal later.

In answer to further questions, the witness stated that the 3 per cent. charge was made for a period of something like 40 years, but safety at sea had improved so much that 3 per cent. was found to be too high a figure.

The Judge: It was a traditional figure?—Yes.

The Attorney-General: And in 1922 it came down to what?—About 2 per cent.

The amount for insurance premiums worked out automatically at 2 to 3 per cent.?—Yes.

The witness agreed that the practice was to pay the premiums incurred for outside insurance from the fund and also to debit it with the costs of any claims which had to be met under the company's own insurance.

The Judge inquired if the company had had very heavy losses in any one year, say, running into hundreds of thousands of pounds, which it had to meet itself, and the witness replied that the risk was largely covered under the general average.

The Judge remarked that 75 per cent. would be covered outside, but 25 per cent. might mean a substantial amount.

The Attorney-General referred to the accounts of the company for 1924 and 1925. In the first of those two years the insurance fund stood at £1,215,000, and in the next it had risen to £1,256,000, or an increase of £41,000. He inquired whether that was due to the automatic result of the operation of the 2 per cent. rule, or whether it was due to a deliberate increase of £40,000 to the fund. The witness replied, "It would be automatic."

In the 1912 accounts it is stated "Profit for the year after providing for depreciation of the fleet, &c., and including dividends and bonus on shares in steamship and other companies." A bonus is mentioned. What was that bonus?—If my memory serves me, it was a bonus from Elder Dempster & Co.

Look at the report attached to the accounts. There, again, it says, "After making provision for depreciation, transferring £130,000 to reserve fund, £47,000 to insurance fund, £5,000 to the pension fund, and deducting the amount of the half-yearly dividend on the preference stock, the Court recommend the payment of the usual half-yearly dividend of 2½ per cent." Everybody concerned is told all about it, are they not?—Yes.

Take the next year. Look at the profit and loss account. Do you find there the transfer to the insurance fund of £37,000?—Yes.

Do you find that the transfer to that fund is £37,000, and the claims on the fund £27,000, and therefore the fund has gone up by £10,000?—Yes.

There, again, it is for everybody to read, and it is again mentioned at the bottom of the report?—Yes.

In 1914, £200,000 was used. One is not surprised in that critical year, but it is all set out there for anyone to see, and it is mentioned in the report?—Yes.

The next year it goes back again, and it is all set out for anybody to see, and mentioned in the report ?—Yes.

So that anyone looking at the report would be able to see in one of these years what the insurance fund was, and what the general reserve was ?—Yes.

And omitting for the moment any question of secret reserves, you see in 1926, as compared with 1925, although they had drawn on the general reserve to the extent of £160,000, yet the insurance fund had gone up slightly ?—Yes.

His Lordship inquired how the insurance fund was represented. Was it in the form of assets ? Was it an outside investment, or was it included in the value of the properties of the company ?

Witness : It was not represented by outside assets, my Lord.

The Judge : It was balanced by the valuation which appears upon the assets on the balance sheet.

The Attorney-General : In a company like this no particular fund has earmarked assets. It is the account in the books, and the general assets of the company are responsible ?—Yes.

The Judge : But some companies have outside investments.

The Attorney-General : It was not so in this case ?—That is so.

Probably the insurance fund would be in ships, or part of the building of the company, or the goodwill ?—Yes.

Sir John Simon : It would not be earmarked.

The Attorney-General : Taking the general balance sheet for the year to December 31st, 1925, anybody looking at that could see " reserve fund £1,600,000 ? "—Yes.

Compare that with 1926. You see that the reserve fund has now become £1,450,000, having been drawn upon to the extent of £150,000, and the insurance fund has gone up ?—Yes.

That is available for anyone to see ?—Yes.

In addition, you can see the profit and loss account for the year ?—Yes.

The document put in by Sir John Simon had no regard whatever to the reserves which do not appear as such in the balance sheet ?—That is so.

The other reserves would appear, if they are in the balance sheet, under the heading " sundry balances ? "—Yes.

The Judge remarked that somebody had produced a document called " income tax account reserve," and he asked whether the annual balance on that account would be included in the heading of " sundry balances."

The witness replied in the affirmative.

The Judge : That would be one of the items that go to make up the sundry balances ?—Yes.

The Judge said that the item of sundry balances appeared in the accounts of the company as far back as 1911. He asked what was included in the item in that year.

The witness hesitated and the Judge said that the reply to the question could be given later.

Before the resumption of the re-examination of Mr. Cason, after the luncheon interval, his Lordship asked what sort of items were included in the phrase " sundry balances."

Witness said it would include amounts for return tickets still to be availed of, deferred rebates, and passages which had been prepaid but not yet availed of, and the unpaid coal accounts, stores accounts, and provision accounts.

The Attorney-General, resuming his re-examination, commented that the point raised by Sir John Simon was a very important one to bear in mind. He went on to compare the build-up of the reserve in various years. From the balance sheet for the year 1925 there were items in respect of sundry balances, accounts not closed, and debts owing by the company, including loan from bankers, totalling £2,602,302. That included, amongst other things, various reserves. He asked witness to assume that the E.P.D. reserve which figured in that total at that date was £390,277. The accounts for the following year showed that the sundry balance item was £2,842,440, and he again asked witness to assume that E.P.D. reserve figured at £110,277. He asked whether, in the course of the year 1926, there were repayments of E.P.D. by the Revenue, amounting to £330,000.

Witness replied that he had not the details.

This matter was left to be dealt with later by Mr. Matthews (assistant accountant to the company), who gave evidence subsequently.

The Attorney-General was proceeding to put a hypothetical question, based on the figures relating to E.P.D., when Sir Patrick Hastings (Counsel for Mr. Morland) raised an objection, and said that it was going too far to put a leading question based on hypothesis. He asked his Lordship not to allow the witness to be asked to make mathematical calculations on assumption. The figures could be obtained accurately from Mr. Matthews later.

His Lordship, who commented that the Attorney-General had not completed the question he was intending to put, said it might be that Mr. Matthews could give the evidence required, but that there might be some question of principle involved with which the Chief Accountant could deal better than Mr. Matthews could.

Sir John Simon said that he felt in a sense neutral about this, but recalled that, on an intimation from the witness, he had refrained from questioning him on the E.P.D. figures, expressly because it was stated that Mr. Matthews could deal with the matter with more intimate knowledge.

The Attorney-General said he was not putting the figures as E.P.D., but merely wanted to show how the figures of one year compared with the figures of the next year.

His Lordship closed the incident by stating that if it were objected that hypothetical questions were not desirable, he would give the Attorney-General an opportunity of recalling Mr. Cason later if desired.

The Attorney-General, continuing, said that income tax in the years 1926 and 1927 was at the rate of 4s. in the pound. A 5 per cent. dividend represented a payment of about £700,000 ; if the company were paying over nominally £700,000, they could deduct from it at the rate of 4s. in the pound, and retain that deduction, *i.e.*, a deduction of one-fifth. In 1926, however, the dividends were 4 per cent. instead of 5 per cent., and the payments amounted to £650,000 ; the deduction of one-fifth amounted to £130,000. In that year, if they debited the company with the payment of £650,000, they must automatically credit the company with the one-fifth, *i.e.*, £130,000. The position that arose, therefore, was that the more they paid in dividends, and the less they paid in taxation, the larger was that automatic credit.

Witness agreed.

His Lordship commented that this was a curious anomaly ; when one first recognised the fact, it impressed one as being strange—and so it was.

The Attorney-General was asking witness whether, as a matter of accountancy, he could represent on the profit and loss account that the company had paid the shareholders and debenture holders the net figure. At this point, however, Sir Patrick Hastings again objected, and said that the question was a leading one and one with which he did not agree. He suggested that the leading question which the Attorney-General was putting would be most objectionable in the eyes of any accountant, and that if he (Sir Patrick) were putting it to a witness, the Attorney-General would be standing up to object.

The Attorney-General said he had simply meant to point out, as in fact he was asked to do, that in that sense the income tax reserve did arise in the course of the year.

Dealing with the insurance fund and general reserve fund, he said that whereas in 1921 the former had stood at £1,022,000, at the end of 1927 it was £1,311,000—an increase of almost £300,000. At the same time, the general reserve fund had been £1,600,000 in 1921, and it was £1,450,000 at the end of 1927. So that considering the two funds together, they had increased to the extent of £150,000 between those two years. Those, he said, would be " bull points " in favour of the company.

Witness agreed.

The Attorney-General asked what was the position with regard to the undisclosed reserves as between 1921 and 1927.

Witness replied that they were much reduced.

The figures were quoted as follows: E.P.D. Reserves: 1922, £100,000; 1923, £100,000; 1924, £330,000; 1925, £300,000—Total, £830,000.

Income Tax Reserves: 1923, £450,000; 1924, £350,000; 1925, £250,000—Total, £1,050,000.

Other figures were given as follows: War Contingency Reserve, £45,000; Corporation Profits Tax Reserve, £40,000; Fleet Depreciation Fund, £444,000.

Witness agreed that these various reserves totalled some £2,800,000.

In the years 1926 and 1927, the E.P.D. reserves were £550,000 and £232,000 respectively, making £782,000. Income Tax Reserves were £175,000 and £120,000, making £295,000. The Corporation Profits Tax Reserve was £32,000. These amounted to more than another million pounds, so that reserves amounted to £3,800,000. Thus there had been expended, between 1921 and 1927, over £3,800,000 from the secret reserves, and it was legitimate to point out that the sum total of the disclosed reserves had increased by £150,000.

Witness agreed.

Sir John Simon pointed out that the prospectus gave the figures from 1911 onwards, but the Attorney-General had dealt only with the figures for half the period covered therein.

Questions were then asked by the Attorney-General concerning the bonus declared by the Nelson Companies, amounting to £200,000 in one case and £100,000 in the other, in 1927. He recalled previous questions concerning the difference, a bonus and a dividend, and asked whether dividends were usually paid in cash. Witness replied that they were. He added, in reply to further questions, that cash did pass as the result of this bonus, but that the cash that had passed was repaid in taking up other shares.

The Attorney-General: All in the same week?—About a week.

Sir John Simon: Was the cash repaid to the same company?—Not all of it.

Asking further questions arising out of the re-examination, Sir John Simon referred to the prospectus, which gave particulars of the dividends paid between 1911 and 1927, after providing for all taxation, depreciation of the fleets, adding to the reserve, and so on. If, he said, the reserve referred to there was the published reserve fund, was it true that there was a great addition to the reserves between 1911 and 1927?

Witness: Yes.

Sir John Simon: How much was it?—The reserve fund was £1,180,000, and the insurance fund £1,051,755.

This totalled £2,231,000.

Sir John Simon asked whether in 1911 there was any substantial unpublished reserve, and witness replied that there was not.

Sir John Simon: So that whether it is the published or unpublished reserves, it is true to say that during those seventeen years (1911 to 1927) additions were made to reserves?

Witness: Yes.

His Lordship said that nobody seemed to know what the unpublished reserve was in the years 1921 to 1924.

The Attorney-General replied that he would deal with that later.

In reply to a further question by the Attorney-General, the witness said that the unpublished reserves were exhausted.

MR. A. H. MCGILL.

Mr. Alexander Hugh McGill (chief accountant to the Pacific Steam Navigation Company, one of the 100 per cent. subsidiaries of the R.M.S.P.), then gave evidence, and was examined on behalf of the Crown by Mr. Pritt.

Witness stated that, at any rate from 1921 to 1927, Lord Kylsant was Chairman of the company, and witness produced statements showing the summarised profit and loss accounts of the company for those seven years. This statement showed the total deficit in each year. For example, the figure for 1921 was more than £725,000. Particulars were also given in the statement of the dividend paid for each year to the R.M.S.P. and the deficit of the Pacific Steam Navigation Company before that dividend was paid. In all the years referred to, with the exception of 1921, there had been a trading profit, before deducting depreciation, but when depreciation was deducted, the figures showed a trading loss in every year. The depreciation figures were the amounts actually charged by the company. The basis of the depreciation charge was roughly 5 per cent., *i.e.*, assuming a life of twenty years, but he agreed that the depreciation charge had in fact been a little more generous in some years. In 1923, for example, there was a substantial excess.

Counsel said that provision was made for depreciation in 1926 and 1927, but he asked witness whether, having regard to the actual value of the fleet at the end of 1925, and the written down value, there was any real need to apply depreciation in 1926 and 1927?

Witness: None whatever.

Counsel: If the right way to get a true picture of 1926 and 1927 would be to cancel the debits for depreciation, there would be a real trading profit in each of those years—a figure of £144,000 odd in the one case and £196,000 odd in the other?—That is so.

He agreed that in 1921, £100,000 was taken from the deferred repairs account—the account to which money had been placed during the war to bear the cost of subsequent repairs which would ordinarily have been done earlier but for war conditions.

Counsel: In 1926 and 1927, money was taken from taxation reserves. Were they free before they were taken?—As regards 1927, that was the final clearing up of the whole thing.

Witness produced extracts from the P.S.N.C. minute book, which recorded, among other things, that Lord Kylsant (then Sir Owen Phillips) was appointed chairman in 1920, that shortly afterwards a special meeting was held at which he was reappointed, and that a year later it was resolved that he should no longer be subject to annual reappointment. There were other minutes year by year showing that the Board had approved of the dividends and the annual reports and statements, and that generally Lord Kylsant was present and had signed the minutes as Chairman.

A further statement produced by the witness related to published reserves. He also produced the reports of the directors of the company for the years 1926 and 1927.

Sir John Simon, cross-examining, referred to an item in the summarised profit and loss accounts, relating to the capital surplus on ships. He asked if that represented profits made on certain ships which were sold for more than their book value.

Witness agreed.

Sir John Simon asked witness to say, as an accountant, that when a ship was sold for more than its book value, the balance was distributable.

Witness replied that unquestionably it was.

Answering Sir Patrick Hastings, Mr. McGill said that included in the profit and loss account for the year 1926 was a sum of £148,000 from the obsolescence fund.

He agreed with the evidence given by Lord Plender that there came a point at which accountants might think it right to give shareholders some notice of these drawings. The accountants of the Pacific Steam Navigation Company were the firm of Harmood Banner & Sons.

Sir Patrick: You would agree with me, would you not, that this firm is one of the biggest and best-known firms of accountants in the whole of Liverpool?—Yes.

Do you notice that the words in the profit and loss account for the year 1926 are these: "Balance for the year before providing for depreciation of fleet"?—Yes.

You notice that Messrs. Harmood Banner did not think it necessary at that time to give notification of the transfer from the obsolescence account?—Yes.

You notice they give a certificate that, in their opinion, the balance sheet is properly drawn up so as to exhibit a true state of the company's affairs?—Yes.

The witness agreed that, strictly speaking, if the balance transferred from the obsolescence account was eliminated there would be no balance.

He also agreed that it was stated that the auditors offered themselves for re-election.

Sir Patrick: And do you notice, if you turn to the balance sheet for the next year, that the offer of Messrs. Harmood Banner was apparently accepted by the company?—Yes.

Mr. Justice Wright remarked that Messrs. Harmood Banner did not appear to have offered themselves for re-election for the year after that.

Continuing his answers to Sir Patrick, Mr. McGill said that the equally distinguished firm of Messrs. Peat became auditors in succession to Messrs. Harmood Banner.

Sir Patrick: In 1927 was there again a transfer from this obsolescence account?—Yes.

A drawing upon the obsolescence account for the purposes of this account?—Yes.

Are the words on the statement for the year ending December 31st, 1927, "Balance for the year before providing for the depreciation of fleet"?—Yes.

And again, in that year did Messrs. Harmood Banner give a certificate in precisely the same form as they did for 1926?—Yes.

Mr. Justice Wright: Had this company any unpublished reserves?

Mr. McGill: Oh, yes, my Lord.

Mr. Justice Wright: Where do they appear on the general balance sheet? They must be there somewhere, or your accounts would not balance, would they?

Mr. McGill: Until they are definitely cleared up, some of them would appear in the debts owing by the company.

The Attorney-General, re-examining, asked if it was not correct that these matters would appear on the left-hand side of the sheet as debts owing by the company.

The witness agreed that that was so, and said that if they appeared elsewhere they would come in as current voyages.

Sir William Jowitt: You were asked some questions about Messrs. Harmood Banner offering themselves for re-election. Do you see anything funny about them offering themselves for re-election?

Mr. McGill: No, it is quite the usual thing.

Sir Patrick Hastings (interposing): It was only because the Attorney-General suggested in opening that it was funny that they should do so that I put the question, not wishing to miss any joke that was being made.

The Attorney-General: Let me say at once that I do not come to this Court to make jokes. I was suggesting that to ask for re-election at the hands of a body of people from whom you are concealing part of the truth was not an honest thing to do.

Sir Patrick Hastings: My question was directed to exactly the same point, that Messrs. Harmood Banner, against whom the Treasury make no suggestion at all, did precisely the same thing as was done here.

Mr. Justice Wright said he agreed that no suggestion had been made against the firm in question by the Treasury. The Attorney-General in opening, he gathered, had wished to indicate his view that the auditors were officers of the company, representing and elected by the shareholders. "I was to blame," said his Lordship, "because I very foolishly said that they did not offer themselves for re-election in 1927."

Sir William Jowitt: The suggestion was made a few moments ago that, in making that observation in my opening speech, I was attempting to make a joke.

Sir Patrick Hastings: Really, Mr. Attorney, I must object.

Mr. Justice Wright: Now, Mr. Attorney and Sir Patrick, don't let this discussion continue, let us get on with the case.

The Attorney-General, resuming his examination of the witness, asked what was the number of shareholders of the Pacific Steam Navigation Company?—"One," replied Mr. McGill.

Sir William: Who? — Royal Mail Steam Packet Company.

Who was the chairman?—Lord Kylsant.

And was Lord Kylsant also chairman of the Royal Mail Steam Packet Company?—Yes.

And so far as you know did Lord Kylsant know all the material facts?—Yes.

MR. W. A. WILLINGTON.

Mr. Walter A. Willington, secretary and chief accountant of MacAndrews & Co., Ltd., one of the 100 per cent. subsidiaries of the Royal Mail Steam Packet Company, produced documents relating to the affairs of that concern. The registered office of the company, he said, was Royal Mail House, but it was managed from Liverpool. Among the documents which he produced were the Memorandum and Articles of the company and a statement prepared from the books of account showing profit and loss and reserve accounts from 1918 to 1927.

Sir John Simon, cross-examining: Just a question on exhibit 82. Take the year 1920 and run your eye down that column. Two-thirds of the way down you come across a figure £180,745, labelled as depreciation extra over 5 per cent. Does that mean that in this shipping company in the year 1920, over and above depreciation, there was no less than £180,745 which otherwise might have gone as distributable profit, devoted to the further writing down of ships?—That is so.

So that from the year 1920 the fleet of this company stood in the books at a much lower figure?—Yes.

As a result of that, if you happen either to sell a ship or to lose a ship and claim insurance in respect of it, you will make a profit, because you get more than the book value of the ship?—It necessarily follows that if you sell a ship at more than the book value, you do make a profit.

Run your eye down the column for 1922. Do you see a figure £84,021. Is that profit on the sale of ships?—Yes.

On how many ships?—Two ships.

Sir John said that looking at the details for 1920, he noticed that the profit on voyages had gone up by over £100,000, and he suggested that that was a very good year for the company. The witness agreed.

Sir John: One way of dealing with it would have been to say, "Here is a very large additional gain; let us distribute it." The other way is to say, "Let us put it aside because there may be a time when we shall be very glad to use it."—Yes.

The witness said he quite agreed that the company had pursued a very conservative policy of not distributing all gains.

Sir John: I don't know whether conservatism is a good thing in finance, but there seems to have been a good deal of conservatism about this company.

Mr. Willington: This company certainly has been very conservative.

Sir John: And Lord Kylsant was chairman of the company.

Mr. Willington: Yes.

Mr. Pritt, re-examining the witness, inquired if it was not correct that in 1927 the sum written off for depreciation was only £19,000.—That was so.

Mr. Pritt then suggested that if the depreciation in fact of the vessels was proceeding as fast in 1927 as it was in 1926, the actual diminution in value would, of course, be approximately the same.

Mr. Willington, replying, said that that company had depreciated at approximately 5 per cent. per annum.

Mr. Pritt said it was a fact, was it not, that the depreciation of 1927 was provided partly out of the receipts or earnings of 1927, and partly out of the receipts or earnings or prudent provision of earlier years.—The witness agreed.

MR. THOMAS SMITH.

Mr. Thomas Smith, chief accountant of David McIver & Co., Ltd., of James Street, Liverpool, was the next witness. He said that he had prepared the accounts of that company since 1918, and during that period Lord Kylsant had been chairman. He produced an exhibit which showed, he said, in summarised form, the profit and loss account of the company for the period 1918 to 1927.

Mr. Eustace Fulton, examining the witness, said he would not trouble to deal with the years before 1921. He

asked the witness if the document before him showed a deficit for the year 1921 of £16,840.—Mr. Smith: Yes.

And in that year does it show that the company brought from general reserve into account £35,000 ?—Yes.

In 1922 does it show that there was a deficit of £7,418 ?—Yes.

And that the company again brought into account from general reserve £25,000 ?—Yes.

In 1923 was there a surplus of £2,858 ?—Yes.

And did the company bring into account for the purpose of paying its ordinary dividend that year, from taxation reserve, some £20,000 ?—Yes.

In 1924 was there a surplus of £22,852 ?—Yes.

And nothing was brought in that year from any reserve ?—No.

In 1925 was there a deficit of £29,458 ?—Yes.

And did the company bring in from taxation reserve £20,000 in that year ?—Yes.

In 1926 there was a deficit of £21,431 ?—Yes.

And did the company bring in from taxation reserve £16,273 ?—Yes.

Answering further questions, the witness said that in 1927 there was a surplus, and nothing appeared to have been brought in from reserves.

Mr. Fulton asked if it was not correct that over a number of years, beginning in 1919, the accounts of the company were put before the Board and considered and approved by them.

Mr. Smith said he had not got extracts going so far back as 1919. His extracts began on February 8th, 1921.

Mr. Fulton: Lord Kylsant, as I understand it, was chairman of the company during that period, but in fact he was not present at any of the meetings except the first one, of February 8th, 1921.

Mr. Smith: It would be according to the record of attendances.

At the request of Counsel, Mr. Smith produced a further exhibit, and Mr. Fulton asked if it contained the directors' report, balance sheet, and profit and loss accounts for the years 1926 and 1927.

Mr. Smith: Not the directors' report, it contained the accountants' report.

Mr. Justice Wright: It seems to be countersigned by two directors.

Sir John Simon, cross-examining: You have been good enough to hand down to me the minute book, and I am just looking at the occasions when accounts were considered. Except on the one occasion when Lord Kylsant was present, and took the chair, as I make out, the gentleman who usually took the chair was Mr. Charles Livingstone.—Yes.

A gentleman of high reputation in shipping circles ?—Yes.

And the company is called David McIver & Co., Ltd. ?—Yes.

It bears the name of one of the best-known and most respected shipping authorities in that part of the world ?—Yes.

And Messrs. Harmood Banner were the accountants ?—Yes.

Should I be right in suggesting that the company was conducted on very conservative lines ?—Yes.

Mr. C. G. Matthews.

Mr. Cyril Gordon Matthews, assistant accountant of the Royal Mail Steam Packet Company, said he had been employed in the accountancy department since 1918. From 1921 onwards he had been dealing largely with the taxation matters, both in connection with the Royal Mail Steam Packet Company and the Meat Transport.

Sir William Jowitt: Did you have the delightful task of dealing with excess profits duty and income tax ?—Yes.

Sir William remarked that he hoped the witness would be successful in making the Court understand the complexity of the subject.

The witness went on to say that he and a colleague had prepared a statement showing the position of the item or items on the balance sheet relating to sundry reserves. On the instructions of Sir William Jowitt, he consulted the general balance sheet for the year ending December 31st, 1921. The table, he said, showed a total of sundry balances amounting to £6,279,000.

Sir William asked witness to look at the figures for the year 1922.

The witness agreed that sundry balances there appeared at £5,042,000.

Dealing with the figures for 1921, the witness said that excess profits duty was put at £816,527, income tax at £762,431, deferred repairs £425,147, corporation profits reserve £34,420, war contingency reserve £45,050, exchange reserve £54,563, premises reserve £30,000, and Government charters reserve at £63,037.

Sir William Jowitt asked if the sum total of those figures came to £2,232,074.—The witness said he had not added them up.

Sir William said he would call it £2,232,000, and it could, of course, be checked.

Dealing with the following year, the witness said that the exchange reserve had gone down to £34,000, and the premises reserve remained at £30,000. The item for Government charges had become £3,900.

Sir William Jowitt: Just run on, will you, to the year 1925. Do you see there the excess profits duty figure as at December 31st, 1925, was £390,277 ?—Yes.

And on the corresponding date of next year, 1926, the excess profits duty figure stood at £110,277 ?—Yes.

You will observe that there is a difference of £280,000 ?—Yes.

If I look to see what happened in the course of the year 1926 I shall find, shall I not, that £550,000 went out of the reservoir to profit and loss account ?—Yes.

Sir William asked the witness to explain how it was that starting out with £390,000, and with £550,000 going out of the reservoir in the course of the year 1926, they still had £110,000 at the end of the year. The witness said that they had £330,000 in cash coming in from the Revenue during the year.

Sir John Simon: Is that received in the year 1926 ?—Yes.

The Attorney-General: Let us start this way, if you will. The year 1925 concludes, and there is a balance of £390,000 standing to the credit of the excess profits duty reserve ?—Yes.

In the course of the year 1926 that reserve is augmented in certain ways and drawn upon in certain ways ?—Yes.

It is augmented because there are in the year 1926 payments from the Inland Revenue, or repayments, of £330,000 ?—Yes.

So I start my sum by adding £330,000 to £390,000, which is £720,000 ?—Yes.

This sum is depleted in the course of the year 1926 to the extent of £550,000, which is taken to the credit of profit and loss account ?—Yes.

That leaves £170,000 ?—Yes.

And £60,000 is attributed to one of the subsidiaries ?—Yes.

And that leaves £110,000 ?—Yes.

The Attorney-General: By looking at this table, therefore, we can see on the various dates as we pass the mileposts exactly what there was credited to that account and for each year what was brought in, and then we shall be able to check it on the mileposts. That is the position, is it ?—Yes.

Mr. Justice Wright: There was a payment of £330,000. Was that a refund of something that had been paid over in previous years in respect of excess profits duty ?—Yes, my Lord.

The Attorney-General: Now as to the building up of the fund. Never mind from where it was obtained. What was the last payment that was made to the credit of the excess profits duty reserve ?—£125,000. That was credited to the account in 1921.

Is that the figure which I find here as a special debit in the year 1921 ?—Yes.

Sir John Simon: You used the expression that it was a repayment from outside. It is a transfer ?—A book entry

Sir William Jowitt: This is a very complicated subject. I want to consider for a moment the building up of the fund excluding payments to the Inland Revenue.

Sir John: I thought you asked what was the first year in which a payment was made, and I thought you did not mean "payments from the Revenue." It is a transfer, of course, from another ledger. The witness said that was so.

The Attorney-General: I meant to ask the last date when any credit transfer was made which went to the building up by the augmentation of this fund, and the answer you gave was that £125,000 was credited or transferred in the year 1921?—Yes.

When that sum had been paid, what was the sum total of the credits which had been placed to this fund?—£2,260,600.

Now will you turn to exhibit 56. Does that show your figure of £2,260,600?—Yes.

The jury will realise, of course, that these are not payments in a sense of payments to outside people at all, but the various credits or transfers to that fund date from 1915 to 1921?—Yes.

So you built up a fund of £2,260,600?—Yes.

Now we come to a very different question. I want to ask you as to payments out of that fund to the Inland Revenue. How much in respect of excess profits duty was paid to the Royal Mail Steam Packet Company? I will ask the question this way: For the purpose of excess profits duty you had to group together the parent company and the various children, didn't you?—Yes.

I want you, if you can, to allocate such part of the repayment as represents the liability of the parent, the Royal Mail Steam Packet Company, and how much was paid to the Revenue, taking it for the whole period—the amount really paid to the Revenue out of the £2,260,600?—£1,179,287.

Sir John Simon: Again this is an extremely complicated matter, and I am sure that the learned Attorney-General will not mind me saying that this is a figure about which I am raising no question. I understand that it was before we come to obsolescence and repairs—it is purely E.P.D.?—Yes.

Sir William: And if I subtract that figure from the totality of the fund, I get—please check me—£1,081,313?—Yes.

May I take it then, subject to a more careful survey of these figures, that the total of this fund is £2,200,000 odd—£1,100,000 has been actually paid over to Inland Revenue and £1,100,000 represents credits and transfers standing to the credit of the fund?—Yes. The last instalment was paid during 1919.

Let us deal first of all with the £1,100,000 which was never paid over, but which stands as a credit to the fund. Was £300,000 of that credit utilised and put to the investment and depreciation account?—Yes.

Can you give me a date for that?—1921.

That means to say in round figures the part not paid over has now been reduced to £800,000?—Yes.

And how was the rest of that £800,000 used?—£800,000 is rather a nebulous sum. It just happened.

I agree it is not a precise figure, but do you know what happened to it in the end?—In the end it was taken to profit and loss.

We will check it out in detail year by year. Now of the £1,100,000 which had been paid over, the last part of it being paid over in 1919, what part of that was repaid—how much of it?—Over £800,000.

Now can you give me the dates on which these repayments were made?—I am not separating these payments for the parent company from the repayments for the subsidiary companies, the repayments for the whole group being £1,370,000. In February, 1923, the amount was £500,000; in January, 1924, £300,000; in June, 1924, £250,000; in April, 1926, £73,133; in July, 1926, £50,000; and later, in July, 1926, £180,000, and in May, 1927, a final payment of £20,067.

Mr. Justice Wright: What is the total of those figures?—£1,373,200.

The Attorney-General: Of which, I gather, £800,000 represents the parent company repayments?—Yes.

Sir John Simon: I thought this gentleman had given a number of figures of repayments representing a sum of roughly £1,370,000. Is that right?—Yes.

Sir John: And I thought the earlier figure which I indicated I would agree was E.P.D. £1,100,000?—Yes, Royal Mail Steam Packet Company only, that was.

Sir John: If these two figures are both right, the result on balance of the whole thing would be that the Revenue authorities appear to pay rather generously.

The Attorney-General: It is not a group figure, but represents the liability of the parent company only. It is a group repayment.

Sir John Simon: I am very glad to follow.

Sir William Jowitt: I do not object to the interruption of my learned friend, because the matter is so very complicated.

Mr. Justice Wright (to the witness): What was the first figure you gave—that for 1923?—£500,000—half a million.

The Attorney-General: Have you got these figures written down anywhere?—Yes.

Sir John Simon: Might I ask this. The Attorney-General is very good in allowing me to interrupt, but are you not able to tell us in reference to these repayments—the repayments to the group—what portion of it, year by year, was received by the Royal Mail Steam Packet Company, because I have got these figures?

The Attorney-General: It may be that Mr. Matthews—although I am afraid it is too good to be true—may have these figures on the same paper. (To the witness) You have written out the portion of the repayment which should be allocated to the parent company?—I can tell you how much of these repayments was kept on account of the parent company.

I think you told me before £800,000?—I can tell you year by year. Of the £500,000, we kept £250,000.

Sir John Simon: In the year 1923?—In 1923. Of the £550,000 in 1924, we paid away £160,000 and we kept £390,000.

Sir John Simon: I agree.

Continuing, the witness said in 1926 payments were made rather difficult, for when the Revenue repaid this money they didn't say what they were repaying, because income tax and excess profits duty were very mixed. So they called this £330,000 of excess profits duty "income tax."

"In May, 1927," continued the witness, "we had a very complicated settlement with the subsidiary company, and I am afraid I cannot say exactly how much of the cash we kept. We took what was left as due to us."

The Attorney-General: Only about £20,000?—£20,000.

It is a question of how you split up the £20,000?—The money we had kept was only by guessed figures, and when we came to the end of the period we found we had kept back too much from the subsidiaries or given them too much, and therefore we adjusted these figures to arrive at the right amount.

Sir William Jowitt: We will go year by year and see how it works out.

Witness: We kept back in cash from 1927 and we paid cash over to subsidiary companies because the payment we had kept was £910,000, which was too much, and so we made payments to the subsidiary companies of the £20,000 which we received in cash.

Sir Patrick Hastings: Am I not right in saying that for that last year out of the constructive payments you took for the parent company a constructive repayment of £551,000? Look at that letter of May 18th, 1927, from the Inland Revenue—is it not clear from that that the Royal Mail Steam Packet Company took from the last three figures quoted there as their share £551,000?—I have not the figure, but a constructive payment would not be a payment in cash.

Sir Patrick: I appreciate that, but that was the amount they took?—I do not recognise that figure.

Sir Patrick: I think probably Mr. Stewart will be able to tell us.

Sir William Jowitt: Again this is a very complicated matter, and these constructive repayments come to nearly another million. For the moment I prefer to consider cash. As to the £1,300,000 I have practically got the facts about that, have I?—Yes.

Just look at this table which I have introduced, and we will just see year by year what happens to the excess profits duty. I think this will make a claim. I start you at the year 1921, and I select that year because that is the last time this fund has been augmented by a credit?—Yes.

£816,527 is the amount of it there?—Yes.

Next year, £716,527?—Yes.

Is that a perfectly simple utilisation of a credit of £100,000 in the course of the year 1922?—To profit and loss.

Now the next year. At the end of the year 1923 the £716,000 has grown to £866,000?—Yes.

But I know that in the course of the year 1923, £100,000 has been taken out?—Yes.

Will you tell me what it is that has come in, and from what quarters, to make the £716,000 up to £866,000, notwithstanding the payment of £100,000. In the next year that £866,000 has gone down to £690,000, and in the course of the same year £330,000 has been taken to the credit of the profit and loss account. So I should expect the £866,000 to be down to £536,000, so there must have been a credit which had brought the £536,000 up to the larger amount?—We started with £866,000, we had £550,000 in cash, which brought it up to £1,316,000, then we paid away to subsidiaries £160,000, we transferred to income tax reserve £236,250, because we had to pay income tax on the excess profits duty repayments. Then taking £330,000 to profit and loss that leaves a balance of £690,000. We added £550,000 which was received in cash, and then deducted £160,000 paid in cash to subsidiaries. So £236,250 was transferred to income tax reserve.

The witness said that 1927 was the first year in which the exact figure of repayments was known.

Sir John Simon: I daresay you have found it a very difficult thing to get money out of the revenue? (Laughter.)—Witness replied in the affirmative.

The Attorney-General: Did the Revenue ask you to repay to them what they had paid you?—No, but they refused to pay us any more.

The Judge: There was a payment for 1919, I gather?—That was the last payment by the Royal Mail Steam Packet Company.

Sir William Jowitt: By March 29th, 1923, had the liability in respect of the six companies been decided?

Witness replied that the liability for 1919 was £726,000. By October, 1923, by writing off allowances, the figure had been agreed at £3,300,000.

And by October, 1923, was it possible to estimate what the final result would be?—An estimate was made in December.

The income tax reserve started in 1921 with £762,000, and by 1922 it was £529,000?—Yes.

In reply to further questions, witness said that the money would chiefly go in cash to the Revenue. The first year in which the fund was used was in 1923, and at the end of the year 1922 there was £529,000 standing to the credit of that account.

In the course of 1923, £450,000 went out to profit and loss account?—Yes.

Witness said that with regard to the corporation profits tax reserve, that was built up originally in 1920, and it had a transfer in the course of the year 1927 to its credit.

The history of the fund is that it was built up by a special debit in 1920 of £34,000, and there was a special credit of £40,000 in 1929, and the fund was augmented as part of the general surplus?—Yes.

Witness was then questioned with regard to a "balance proof" for the purposes of income tax reserve, and he said it was prepared in March or April after the accounts were closed. Witness also produced other accounts relating to the following year.

Is that the history so far as you have been able to tell us, in relation to the building up of the taxation reserve?—Yes.

And if you take the year 1921, is 2½ million the sum total of the taxation reserve, and do you find that at the end of the year 1927 the sum total is £329,000?—Yes.

You have had very substantial repayments in respect of E.P.D.?—Yes.

And they have been put in to swell those reserves?—Yes.

And at the end of 1927, had you, so far as you could see, substantially come to the end of any possible augmentation of your taxation reserve?—Yes.

Sir John Simon: There is one figure at the beginning which I indicated I did not follow. Perhaps you will look it up and tell me about it in the morning. You gave us a figure of £2,260,000 as the total amount which in the seven years 1915 to 1921 the company had provided from profits to the credit of E.P.D. reserve. The figure which I don't follow is the figure you next name, where you said that the actual liability in the end of E.P.D. was £1,179,287?—No, I think you misunderstood. That was the amount which had been paid on account. It bore no exact relation to the liability.

Is the £1,179,287 the cash that was paid by the R.M.S.P. on E.P.D. account to the Revenue?—Yes.

The actual liability for E.P.D., however discharged, was agreed in 1927 at £1,769,122?—Is that before deducting the obsolescence allowance?

My figure as supplied to me is this. That during the seven years 1915 to 1921, the R.M.S.P. provided from profits to the credit of E.P.D. reserve, £2,260,000. The actual liability is finally agreed in 1927 at £1,769,122, without deducting any obsolescence allowance. The obsolescence allowance was finally agreed in 1926, and I ask you, was the figure agreed at £1,190,544, and the repairs allowance agreed in 1926 for the R.M.S.P. at £238,161?—Yes.

If we add that last figure to the £1,190,544 obsolescence allowance, they come to £1,428,705, the sum total that the Government in the end allowed back to the R.M.S.P. on obsolescence account?—Yes.

The hearing was then adjourned.

FOURTH DAY'S PROCEEDINGS.

Continuing his cross-examination of Mr. Cyril Gordon Matthews, the assistant accountant of the Royal Mail Steam Packet Company, Sir John Simon asked questions relating to certain documents which were handed to witness and to the jury.

Sir John Simon: You see what has been done in this exhibit. Merely to extract some figures. They really are the figures which, taken all together, produce by addition and subtraction what is termed on the right hand side of the profit and loss account in 1926, the sum of £439,212, and in the same way the other document you have shows the figure for 1927 at £697,456. Is that so?—Yes.

So far as the income tax figure, which is the second figure on both pages, £175,000 in the one case, and £120,000 in the other, we have through other witnesses ascertained that those amounts became available in the year 1926 or 1927 and were promptly transferred to profit and loss. Is that so?—Yes.

They do not come out of old reserves at all?—No.

Counsel then questioned the witness with regard to excess profits figures of £550,000 in 1926 and £232,788 in 1927. He said that it would be fair to say that those figures were figures which were not properly transferable to profit and loss account until the year in which they occurred, in 1927. The situation was that there were three different disputes in settling up the E.P.D. First, the Crown's claim against the company for E.P.D., and that was a claim which the company should pay to the Crown. Then there was a second dispute as to what would be recognised as the obsolescence allowance, which was a question as to how much the Crown should pay to the company. And, thirdly, there would be the deferred repairs allowance which again was a thing which was to

be paid or allowed by the Crown to the company. Is that so?—Yes.

Am I right in saying that taking those three things together and to arrive at the ultimate settlement one has to wait until the year 1927?—Yes.

That is the year in which the sum total was fixed?—Yes.

Is this right? Let us get it as clear as possible. In the end it turned out, when all was done, that after they had been properly fixed the Crown was to receive certain money from the company and there was subtracted the two amounts and the ultimate result was that there was £340,417 net which was the liability for the whole period to the Crown?—Yes.

And would you take this amount, which might have to be paid, and when you have subtracted the two amounts it all works out and was settled in 1927, and you were able to say on balance that £340,417 is the net liability paid and to be discharged by the company?—Yes.

And the date when the final agreement was reached was May 18th, 1927?—Yes.

The £340,417. Would it be paid and discharged out of the earnings of the company?—Yes.

In fact, E.P.D. is a duty upon profits?—It is part of the profits paid over to the Revenue.

And that is why it was called excess profits duty?—Yes.

In 1927 the amount of balance on profits that the Crown would want was £340,000. Am I right in saying that the company, from first to last, provided in its accounts for the claim which the Crown might make for excess profits duty, £2,260,000?—Yes. Without making allowances for the other way?—Yes.

So if you took the seven years, and having fixed the pre-war standard of annual profits the company thought it prudent from time to time to secure that, if it was called upon to pay. It would have the money kept for the purpose?—Yes.

Was that a perfectly prudent and perfectly proper thing to do?—Yes.

Although the net balance which had to be found was only £340,000, you told me yesterday that so far as the claim of the Crown against the company was concerned, the claim turned out in the end to be £1,769,000?—Yes.

It was safe to bring the money into the profit and loss account. It remained undistributable profit?—Yes.

And as the years went on, 1923, 1924, 1925, 1926, and 1927, we find that these large sums of hitherto undistributed profit are brought back year after year into the profit and loss account and become distributable profit?—Yes.

There is no doubt that it is profit?—No.

In 1927 I notice that the excess profit figure is not a round figure, but a figure of £232,788?—Yes.

Was that sum ascertained to be the amount, and the exact amount which should be taken into the profit and loss account in that year as soon as you had settled up between the Royal Mail and its subsidiaries?—Yes.

The other things that happened in this other year 1927 were, first of all, there was a final receipt from the Revenue of £20,000; secondly, there was an agreement finally reached in 1927 which fixed the figure; and, thirdly, there was a very complicated thing settled up or adjusted between the R.M.S.P. Company and its 100 per cent. subsidiaries?—Yes.

As soon as ever that was done, was this £232,000 odd transferred to profit and loss account?—Yes.

Is there any doubt that that item is an item which was properly transferred in that year?—There was no doubt at all. We could not have transferred it before.

You would not take the view that this £232,788 was lying somewhere as an old reserve of long ago, and in 1927 suddenly it occurred to you to turn it into the profit and loss account?—No.

It was connected with the events of 1927 and had been earned profits all the time. It could not be put into the profit and loss account until that moment?—That is so.

You will have noticed that the Crown have made an exhibit of a document called a balance proof in the income tax account. Was there also a balance proof of excess profits duty account? One of the documents that would be under your charge?—Yes.

Sir John Simon said that was one of the documents which had not been produced, but he wished to put some papers in with regard to it. Copies were handed to the jury, witness, the Judge, and to the prosecuting Counsel.

If you look into the excess profits ledger you will find that £390,277 of profits of the company was being kept as balance there in view of possible claims for E.P.D.?—Yes.

Was that in fact the position at the beginning of 1926?—Yes.

Does this balance proof E.P.D. of December 31st, 1925, help one to see what at the time was thought might at any rate be the claims against you?—Yes.

Therefore it gives one a glimpse as to what was the view that the company was taking at that moment, the beginning of 1926, and what its liability might turn out to be?—Yes.

And the view that was being taken in the accountancy department?—Yes.

If I understand this document rightly, it seems to show that so far as was estimated then, this £390,277 was a balance which ought to be kept and not immediately distributed?—Yes.

Because, when I look on the other side, you will see it is only an estimate, that there was an estimate of a total E.P.D. liability less paid on account of £472,000, and that this is a bigger amount than the £390,000. Lower down, there is an estimate of the obsolescence allowance, and that had not been settled, and some had not been paid?—That is so.

Is it, in your view, a prudent matter that you should not anticipate payments that you hope to get from the Government before you get them?—Certainly.

Does this balance proof as at December 31st, 1925, show that at the beginning of the year 1926 the then balance £390,277 ought for the time to be retained?—It would be prudent to retain it.

Let us look at the ledger which records what happened to the £390,277 during the year 1926. The jury will follow that what I am doing is to see whether this amount was paid to profit and loss account. That is a figure which could not have been distributed until 1927. Is that so?—Yes.

Down to that moment it was properly held to meet possible claims?—Yes.

What happened in that year was this: Some six months later, in July in the year 1926, the Government with generosity paid £320,000 in cash to the R.M.S.P. Company?—Yes.

Being, as the jury will appreciate, a payment on account of the reduction of what was the liability in view of obsolescence account and other things?—Yes.

It means that at one time the Crown had taken up the position that £330,000 of profit made by the R.M.S.P. belonged to the Crown, and now they said, "We have £330,000 of your profit which we ought to give you back, and here it is"?—Yes.

The Judge: In fact, it was a repayment of the amount before the obsolescence account had been ascertained?—Yes.

Sir John Simon: It is in the nature of profits of the company all the time, my Lord.

The next thing is that there is £330,000 received in July, 1926, from the Revenue by the R.M.S.P., but look on the other side of the account. Was £60,000 of that passed by your department to the subsidiaries?—Yes.

When these E.P.D. discussions and settlement took place between the Revenue and the R.M.S.P., the R.M.S.P. represented the subsidiaries?—Yes.

Was a part of the money returned to the subsidiaries a sum of £60,000, which the R.M.S.P. thought necessary to transfer?—Yes.

That leaves you with £270,000?—Yes.

If I add the £270,000 to the £390,000 with which the year began, I shall get over £600,000 altogether, and in

December, 1926, there was a transfer to profit and loss of £550,000?—Yes.

And the balance with which the next year begins is reduced to £110,000?—Yes.

Does that mean this: that in view of the fact that there had been in 1926 a final settlement of the obsolescence and the deferred repairs, notwithstanding the fact that it was not until 1927 that there was a final settlement of E.P.D., it appeared reasonable to reduce the balance of £390,000 to £110,000?—The air was much clearer at that time.

And it was possible to cut the thing a little closer?—Yes.

It is, of course, profit?—Yes.

The excess profits duty credits were £550,000.—Yes.

You would not take the view that that was part of some antiquated reserve of years and years?—No. I cannot say that the £550,000 was a definite ascertained figure that arose in 1926.

You have to do what is prudent?—Yes.

In the year 1926 had there been, apart from the receipt of the £330,000, what has been called a constructive repayment?—Yes.

What was the amount of that which the company received in the year 1926?—The R.M.S.P. was £551,022.

Does it occur to you that, having received £551,022, £550,000 was transferred from this account at the same time, in the same year, was a perfectly proper thing to do?—Yes, the exactness of the figure was a coincidence.

Replying to the Judge, witness said that part of the money due to the R.M.S.P. for obsolescence was set off as money due by the R.M.S.P. for E.P.D. which had never been paid.

Sir John Simon: If we take a survey now of what was happening between 1921 and 1927, this seems to me to be the story. In 1921 there was no part of any excess profits duty earmarked, but £300,000 of the provision was used to write down investments?—Yes.

That means that you are really improving your position but that you are not paying any money away and you have it there in case of need?—Yes.

And in 1921 there was no transfer from the E.P.D. to profit and loss account, but £300,000 was used to write down investments?—Yes.

In 1922 you got £100,000 transferred to profit and loss?—Yes.

In 1923 you began to get actual repayments from the Revenue?—Yes.

And in that year the amount that was received is, so far as the Royal Mail is concerned, £250,000?—Yes.

And in 1923 there was another £100,000 transferred to profit and loss?—Yes.

In 1924 the Royal Mail received £390,000 net from the Revenue?—Yes.

And in the same year £330,000 was credited to profit and loss?—Yes.

In 1925, no cash was actually received, but the deferred repairs claim was finally settled in January, 1926?—Yes.

The accounts for the year 1928 are not settled on December 31st?—No, they were settled in April and May.

And when the time came to settle the amounts, you knew that the deferred repairs claim was finally settled?—Yes.

And in the accounts of 1925, did you credit £300,000 to profit and loss?—Yes.

Taking rather more out than before?—Yes.

Did you consider that was justified because the position was becoming more clarified?—Yes.

In 1926 the company received £270,000. There was this constructive repayment, and £550,000 was transferred to profit and loss account?—Yes.

And was it prudent to do so?—Yes.

They were just as much profits?—Yes.

It was a question as to whether the Crown or the company should have them?—Yes.

In 1927 you get a complete settlement in the course of the year of everything?—Yes.

Am I not right that the ascertainment of the final sum which settled this up occurred after May 11th, 1927, which was the date when the balance sheet of 1926 was signed?—That is so.

Then could it have been dealt with until the next year?—No.

And was it dealt with in 1927?—Yes.

His Lordship said he wanted to know how the item of £110,000 was swollen to £232,000. In other words, it would appear that something came in from somewhere. The company started with a balance of £110,000, and finished with a balance of £232,000. Something must have caused the original balance to be increased.

Sir John Simon remarked that the simplest way to get at the facts was to call attention to the "sundries" item which appeared at £1,198,000, although on the other side of the account there was another item of more than £1,000,000. He asked the witness to explain what was included in the "sundries" item.

The witness answered that in that connection "sundries" did not mean what it usually meant. It there meant that a number of accounts were concerned in one item. The position of the subsidiary companies was that there was, apart from the adjustments, and apart from any income tax reserve, a collection of accounts which related to E.P.D. There was a cash collection of £40,000. There was a sum of £120,000 standing in other accounts in the company's ledgers, and it was collected into the E.P.D. item. There was nothing outside, except £40,000, which was paid to the Nelson Company. The Revenue had overpaid the Royal Mail Steam Packet Company in connection with the income tax refund. When the Revenue ascertained that too much income tax was being refunded they adjusted the E.P.D. amount which was owing to the company.

Sir John Simon suggested that the Government had paid the Royal Mail Steam Packet Company something that was not owing on one account, and they set it off against something which was owing on another account.

The witness agreed that that was the case.

The Judge: They paid in that way £20,000. The company started with £110,000, and got about £100,000 by settling up the various accounts and bringing them back to the E.P.D. account, where they ought to be?—Yes.

The Judge: That was their proper place?—Yes.

Sir John Simon: It is easy to deal with millions in a phrase, but was this settling up between the subsidiaries and the Royal Mail Steam Packet Company a very elaborate matter, involving many cross claims?—Yes.

Was it possible to carry it through and complete it until there had been a final settlement between the Revenue and the Royal Steam Packet Company?—It was not possible.

That was only possible in 1927, and therefore the settlement with the subsidiaries could not be until then. Until you had settled with the subsidiaries and cleared the books, would it have been proper to transfer from E.P.D. and distribute all of it, or leave something as a provision for E.P.D.?—No, it would not.

The Judge: It appears to be a payment to profit and loss account which was properly made in 1927 and could not have been made before.

The witness agreed that that was so.

Sir John Simon: It is not in the least degree of the character of an old free reserve?—No.

So much for E.P.D. I see that in the year 1927 there is a corporation profits tax transfer. Which was the year when the corporation profits tax was imposed?—I think it was 1920.

Which was the year in which it was brought to an end?—June 30th, 1924.

The taxpayer knows when it stops, but is not so certain as to when it began. (Laughter.) Notwithstanding that this unpleasant impost came to an end by law in June, 1924, did discussions between the taxpayers and

the Revenue as to how much they owed under it continue for some time ?—Yes.

And in the case of the Royal Mail Steam Packet Company, did it continue until the year 1926 or the year 1927 ?—1926, I believe.

Down to that time, any reserve that you have to make to meet corporations profits tax claims was something which you must in prudence keep ?—We only kept just over £1,000 for those years, because we knew pretty well in 1924 that there was no liability.

What was the corporation profits tax at £32,000 in 1927 ?—That was an amount, except for the £1,000, which we had to keep or collect from the Nelson Line in the final settlement of E.P.D.

It was collected in the year 1927 ?—Yes.

With regard to the corporation profits tax of £32,000, is it correct to say that that £32,000 was not an old free reserve, but was made up of a sum which you got in that year, in connection with the settlement of E.P.D. with the Nelson Line ?—Yes.

Would it have been possible to have used this amount of £32,000 according to ordinary prudent business in advance of the year 1927 ?—No. I could not recollect whether we could have collected it before, but we did not.

Sir John Simon then referred to the proceeds of certain sales. He pointed out that there had been the sale of ships, both in London and Barbadoes, and that matter was finally settled in 1926 or 1927. He asked whether, when that money became available, it was transferred to the profit and loss account, and the witness agreed that that was so.

Sir John Simon pointed out that there was also a ship which was sold. One of the units of the fleet had been standing in the books of the company as though it was worth X pounds. It was sold for X pounds, plus Y pounds, and Y pounds was the profit. The witness said that was the correct description of the matter, and the Y pounds represented the extra depreciation which had been written off the vessel.

Profits had been used to write it down ?—Yes.

When you found it was worth more, you ascertained that Y pounds were realised and available for distribution as profits ?—Yes.

And £6,093 is that figure in 1926 ?—Yes.

Sir John Simon said that in 1927, out of a large total of more than £1,000,000, there were sundry trading items passed or transferred. There was a composite figure of £17,000, and the witness explained that it included butter freights of about £13,000 which had accumulated.

There was the Government charters reserve ?—The Government charters reserve had been gradually liquidated and there was a small amount left over at the end. The only thing we could do with it was to bring it back into profit and loss.

Sir John Simon observed, " I do not suppose we are being prosecuted about that." Turning to the Judge, he said he had been cross-examining the witness in order to ascertain whether certain sums came out of old reserves.

The Judge : Mr. Matthews seems to have explained what was done with great clearness and has made a most admirable witness. The facts are now clear.

Mr. Pritt, in re-examining the witness, said : In various years, and we are only dealing with two strictly, a sum of money was transferred from E.P.D. reserve to profit and loss account ?—Yes.

Who decides the precise figure to be transferred. Do you know or does the decision merely get passed on to you ?—As to how much is to be taken out, I suggest the figure.

You suggest the figure to Mr. Cason, and you receive from Mr. Cason either with or without delay a decision in the matter ?—Yes.

Sometimes your suggestions would be adopted ?—More or less.

Mr. Pritt called attention to the E.P.D. reserve account for December, 1925. On one side was the item " Balance per ledger £390,000," and on the other side was " E.P.D. liability, less payment on account, £472,000." That was the liability anticipated at the time. There was also in the same account an item of £640,000 which was described as " Surplus reserves excess of reserve over liability."

The witness said that he made the entry in question, and it was correct as far as could be estimated.

On the best view of the matter, in December, 1925, which could be formed, that figure was regarded as surplus reserve ?—Yes, but you should take into consideration the fact that there are deductions from it.

What deductions ?—The transfers to profit and loss.

The transfers in 1922, 1923, 1924, and 1925 ?—Yes.

Sir John Simon said that he must have misread the account. He had thought the account dealt with the E.P.D. liability, and that there was the obsolescence allowance. He had understood that the figures so far as obsolescence were concerned were only estimates.

The witness explained that the company had thought that the total liabilities were £1,620,410, and they had reserved £2,260,000, or a difference of over £600,000.

Mr. Pritt : You thought at that time your reserves were in excess of your total expected liability ?—Yes.

By the sum of £640,000 ?—Yes.

The full position is this : You expected at that time that you would receive £1,608,000 in respect of obsolescence allowance, and that you would have the benefit or credit of £1,608,000 for obsolescence allowance ?—Yes.

If that is added to the £640,000, you get just over two and a quarter million. You pointed out that £1,366,000 of that had already been used to benefit other accounts, including the profit and loss account ?—Yes.

One view of the figures was that there was a spare reserve of £640,000. Another view of the figures was that there was a credit of £886,000 ?—Yes. The obsolescence allowance did not include any amounts which would be paid to subsidiaries. Part of the obsolescence allowance was in due course paid over to the subsidiaries.

In addition to the £410,000 already paid ?—Yes.

What was the amount ultimately paid ?—Between £400,000 and £500,000 more.

You gave a round figure of £400,000. Is that in addition to the £410,000 you see in the account ?—Yes. The amount was actually £430,000.

The Judge : They got in all £840,000 ?—Yes, my Lord.

The Judge : Out of the £2,000,000 ?—Yes.

Mr. Pritt : The position at the end of 1925 as between the company and the Revenue was very similar to that which existed between the company and the Revenue at the end of 1923 ?—We had a clearer idea of what the liability was to be. There was no very great difference. Neither side had paid anything to the other in 1924 or 1925 ?—There was a payment in 1924.

It was £550,000 ?—Yes.

Had your prophecies and expectations at the end of 1923 proved to be substantially correct at the end of 1925 ?—We were fearing a liability of £100,000 more by that time.

Not a payment of £100,000 more, as you had overpaid ?—Yes.

After 1923 there was no likelihood of the company having to put its hand into its pocket ?—No very great likelihood. In 1925 the estimate was £100,000 more than the estimate of 1923.

In 1926 we know that the actual transfer to profit and loss account was £550,000 ?—Yes.

We know that there were payments in cash of £330,000 and constructive payments of £551,000 ?—Yes.

In substance, was that what you expected, or more or less than you expected on the general position of your negotiations with the Revenue ? Did you expect to get as much as £330,000 in cash and £550,000 in allowances ?—I think we expected it. We were in constant touch with the people who dealt with the figures and the Revenue, and knew from day to day how things progressed.

You received neither an unexpected windfall nor a stunning blow ?—Neither.

By July, 1926, payments, actual and constructive, were made ?—Yes.

Did you suggest in 1926 the figure to be taken from the E.P.D. reserve and put into the profit and loss account ?—Yes.

When did you make the suggestion?—When the accounts were closed, about March, 1927.

What did you suggest?—£350,000.

Did you know then that £350,000 had been provisionally suggested in September, 1926?—Very possibly, it was in September, 1926, I suggested it. When Mr. Cason made out the estimated profit and loss account, the suggestion was made.

That was in the autumn of 1926. Would £350,000 have been a wrong figure?—No, it would have left us a wider margin.

£550,000, was that a right or a wrong figure?—That was a right figure, but it was as much as I should like to take.

Do you know that Lord Kylsant had directed that the figure should be £550,000?—I was asked whether £200,000 more could be spared.

What did you say?—I said it could.

If you had been asked whether another £200,000 could have been spared, what would you have said then?—I do not know what I should have said then.

All these sums of money have been derived from profits?—Yes.

Not from profit earned in 1925, 1926, or 1927?—No.

The Judge: They were earned before 1920, I suppose?—Yes, my Lord.

Mr. Pritt: The last transfer to the reserve was?—1921.

Sir John Simon said it was no doubt known to the witness that by the provisions of the Income Tax Act, where any person had paid E.P.D., the amount so paid would be allowed as a deduction in computing the profits of the year for income tax purposes. But where any person or company had received repayment of any amount previously paid as E.P.D., the amount so repaid had to be treated as profit for the year in which the repayment was made.

The witness said that was the case.

The Judge: Were you charged with income tax?—Yes, on all the cash repayments, and the constructive repayments were brought in as profits for the year in which they were repaid. Constructive repayments were brought in during 1926.

Sir John Simon: What is received back has to be treated as profit for the year in which the repayment is received?—Yes.

When income tax is paid on that, *pro tanto*, the figure of assessment would be enlarged?—Yes.

Whether it ultimately produces a net profit or not for the year depends upon other things?—Yes.

The Judge: It would simply come into the general balance. It is not a subject of a separate assessment?—No, my Lord.

Sir John Simon: It is treated as an element of profit in the year.

The Judge: And therefore brought in with the other profit. Even after allowing for it, however, there might in some cases be no balance of profit left.

Sir John Simon agreed, and went on to say that there was a great deal of controversy regarding that particular matter before it was finally settled. Sect. 39 of the Finance Act of 1921 provided: "Notwithstanding anything to the contrary in the principal Act, repayments and adjustments of E.P.D. may be obtained and made and additional assessments to E.P.D. in respect of any accounting period may be made at any time as the case may require unless and until Parliament otherwise determines." After 1921, although E.P.D. had come to an end, the Legislature expressly said that the liability to assessment or additional assessment in respect of any accounting period was to go on unless and until Parliament determined. The year in which Parliament so determined was 1926. The actual provision in that year was that what had been settled should be treated as final unless the Revenue gave notice that there was an outstanding dispute which could be left over.

The witness explained that in 1926 the E.P.D. liability of the Royal Mail Steam Packet Company was still undetermined. It was not finally determined until 1930, although the amount outstanding up to that time was small.

The Judge: Was that why you kept £5,000 aside?—In 1930 we had a further refund of £1,300. That was early in 1930, and that was the settlement.

The Judge asked when the special notice required under the Act of 1926 had to be given.

Sir John Simon replied that he thought it was a notice of "Non-determination." If the Revenue thought they had something they could usefully dispute, they had to give notice of non-determination, and in that way could keep the matter alive.

The Judge: I suppose the time was fixed during which they could give that notice?

Witness: Notice was given to us in September, 1926.

Sir John Simon: The wheels of the Revenue grind exceeding small, and sometimes slowly. (Laughter.) Turning to the witness, he said he gathered that notice of undetermined liability was served on the Royal Mail Steam Packet Company and that it was not finally settled until 1930. The reply was in the affirmative.

Sir John Simon said it would be observed that, of course, the sums which were ultimately distributed under the profit and loss account, although undoubtedly profits, were profits which would have an origin earlier than the year in which they were distributed. He thought he was right in saying that the obsolescence claim arose under an agreement which was made between the Chamber of Shipping and the Government after the E.P.D. had come to an end.

The witness said that was correct, the date being November, 1922.

Sir John Simon: And then, after that, there were repayments in regard to obsolescence, and they become, no doubt, profits, and in the nature of things they are profits which arose under that agreement.

His Lordship referred to the matter of deferred repairs, and inquired whether there was any agreement with the Government in that matter.

The witness explained that there was not any separate agreement, but the matter was covered under the Finance (No. 2) Act of 1915. There was considerable argument as to what the provisions of that Act really meant.

His Lordship observed that "obsolescence" was really a misnomer. It was due to the building of ships at the very high costs which were ruling at one time.

Continuing his cross-examination, Mr. Pritt asked the witness whether "minor showers after the storm went on until 1930," and the witness said that was the case.

The fact that things were not finally cleared up was known in 1927?—Yes.

It was not thought sufficiently important to prevent you transferring practically the entire reserve?—There were specific cases left over.

The Judge: You really closed the whole thing in your books?—Yes.

MR. A. F. LITTLE.

Mr. A. F. Little, secretary of H. & W. Nelson, Limited, and the Nelson Steam Navigation Company, Limited, was the next witness. He produced the minute book of the Nelson Steam Navigation Company, and said it showed that at a meeting in May, 1913, Sir Owen Phillips was unanimously appointed chairman of the company. The minute book also showed that in the subsequent years the accounts of the company were considered by the Board of Directors. Lord Kylsant was present at each of the meetings, and signed as chairman. There was a meeting of the directors on December 12th, 1927. Apparently Lord Kylsant "took the meeting," but the minutes were signed by Mr. Lubbock. The minutes of that meeting stated that it was "resolved that a cash bonus of £200,000 should be declared." It was also decided that the offer of the Royal Mail Steam Packet Company to sell to the Navigation Company the whole of the issued and paid-up share capital of H. & W. Nelson, Limited, at par should be accepted. The transfer was to take place on September 28th, 1927, less dividends and bonus declared, and be paid out of accrued profits. In addition it was decided that 1,000,000 shares of £1 each

should be allotted to the Royal Mail Steam Packet Company.

The witness produced the minute book of H. & W. Nelson, Limited, and stated that it recorded that on May 20th, 1913, Sir Owen Phillips was elected as chairman of the company. There were meetings of the company in 1922, 1923, 1924, 1925, 1926, and 1927, mostly in the month of June, and there were records of the fact that the balance sheets and profit and loss accounts were before the Board, and were approved. All those minutes were signed by Lord Kylsant as chairman. An extraordinary general meeting of the company was held in London on December 30th, 1926, when the chairman moved a resolution to the effect that it was expedient to capitalise £200,000 standing to the credit of the company's reserve fund, and forming part of the undivided profits. The directors were authorised to apply the amount in paying up in full 2,000 shares of £100 each, which were to be allotted to the existing shareholders. Lord Kylsant was present at the meeting. On the same day there was a meeting of the Board of Directors, which Lord Kylsant did not attend.

Sir John Simon: This is a criminal case, and the Crown are ascertaining that neither of the two defendants were present at meetings, but minutes relating to those meetings are being read. It might be proper in a commercial case for such a procedure to be followed.

His Lordship agreed with Counsel's suggestion and ruled that at the moment the evidence tendered was not admissible.

Mr. Pritt said he would submit that the evidence was admissible, as it was a relevant fact to prove.

The Judge: Facts you can prove.

Mr. Pritt urged that minutes were admissible as evidence of a fact under the Companies Act.

The Judge: The actual language of the resolutions cannot be evidence against either of the two defendants if they were not present. The fact that a thing was done by the company can be established.

MR. S. W. BLACK.

Mr. S. W. Black, an assistant secretary of the Royal Mail Steam Packet Company, stated that he kept the charters of the company. He produced a copy of the charters, and vouched for their accuracy.

Sir John Simon said that he saw from the charters that the directors might, before recommending any dividend, set aside out of the company such sums as they might from time to time think proper as reserves, &c. All sums so set aside would be applicable to meet any loss, the gradual liquidation of any debt or liability, or for repairing or renewing any property, or for equalising dividends, or for distribution by way of dividend or bonus which the directors might deem to be of advantage to the company, provided that only such portion of any reserve or other fund as should in the opinion of the directors represent undivided profits properly available for dividend. That, commented Counsel, was part of the constitution of the company.

The Judge: Perhaps you can tell me, is there anything in the regulations or the Articles about the rights or the want of rights of the shareholders to ask for information?

Sir John Simon: I have not myself observed that.

The Judge: I looked, but could not find anything.

Sir John Simon: I believe that in the case of this company there are no such provisions in its constitution.

MR. R. S. STEWART.

Mr. R. S. Stewart, a Chartered Accountant and a member of the firm of Blease & Sons, was the next witness. He stated that his firm had acted as the auditor for the two Nelson companies since they were incorporated. His firm had prepared the profit and loss accounts, and also attended to taxation matters. Witness personally had dealt with the duties of his firm to the Nelson companies. He produced the certified balance sheets for 1926 and 1927 of the Nelson Steam Navigation Company.

Mr. Pritt: Are they both signed by Lord Kylsant and Mr. Lubbock as directors?—Yes.

The witness also produced the certified balance sheets of H. & W. Nelson, Limited, for the same two years, and agreed that in each case they were signed by Lord Kylsant and Mr. Lubbock as directors.

Was Lord Kylsant the chairman of both companies from 1913 onwards?—Yes.

The witness said that he had prepared a summary of the accounts of the two companies from 1921 to 1927. He had recently discovered a small error in one document he had previously produced, referring to the taxation reserve account. The error, however, did not falsify any other figure, and Counsel said he did not think anything would turn on the matter. The witness agreed that one of the documents he had produced showed that in 1926 there was a transfer from deferred repairs reserve of £20,140, and from taxation reserve an amount of £29,860. There was a similar transfer from taxation reserve in 1927 of £131,035. In each of the years 1921 and 1922 both of the Nelson companies made a net profit. In June, 1926, the reserve of H. & W. Nelson, Limited, stood at £200,000.

Was a bonus declared in December of that year of 2,000 shares of £100 each?—Yes.

As a result of that, was £200,000 put in the balance sheet as capital, and taken from reserve?—Yes.

And the capital of the company was increased from £50,000 to £250,000?—Yes.

Did you subsequently make some adjustment in the accounts in relation to that matter?—The taxation reserve account was transferred to reserve account.

Why did you do that?—It was on the instructions of Lord Kylsant.

Cross-examined by Sir John Simon, Mr. Stewart said that he was the partner of Messrs. Blease & Sons (Chartered Accountants, of London and Liverpool) who had had the responsibility of looking after the E.P.D. questions on behalf of the Royal Mail Group. He said that provisional figures had been discussed year by year with the Inland Revenue, and that he had taken part in the discussions.

Sir John Simon: So far as there was any agreement reached at first, was that agreement only provisional?—Yes, only provisional.

Sir John Simon: You say that in the year 1927 figures were arrived at which were more final, but the actual finality was reached in 1930?—The final settlement was 1930.

Sir John Simon: As between you and the Revenue, the discussion would be, would it not, as to figures for the group?—Yes.

Sir John Simon: And then the question of how the figure for the group was to be distributed among the different entities, the 100 per cents., and the R.M.S.P. would be a matter which the Revenue would have nothing to do with?—The Revenue would have nothing whatever to do with that.

Sir John then dealt with the contrast between the original provisional estimates and the figures which were arrived at, say, in 1927. For example, he said that the figure for 1917 was at one time assumed to be £586,198 for the whole group, but in 1927 the figure for 1917 was found to be £976,048. He asked witness how much of that latter figure represented the R.M.S.P. Company's proportion.—Witness said the proportion was £526,122.

His Lordship: That is a new figure, so far as I can remember.

Sir John Simon said the reason was that up to this point his Lordship had not had the figure as for a given year.

Witness explained that from that figure of £526,122 there had to be deducted a nominal repayment to the R.M.S.P. amounting to £10,639, so that the net figure was £515,483.

Sir John Simon: Is that an illustration—I consider it a striking illustration—of the way in which the provisional figures which were first discussed differed from the more final figures which were substituted in 1927?—Yes.

His Lordship asked if the figure of £515,483 included the proportion for meat transport as well.

Sir John Simon replied that it did not. Sir John added that he had figures for other years, but in some years there was not so much contrast, or no contrast at all. For the year 1915, for example, the figures were practically the same as determined at the different dates.

His Lordship remarked that things were simpler, of course, in 1915.

After further questioning, Sir John Simon said that the rate of duty was different in different years, and therefore it made a very great deal of difference how one allotted the figures as between one year and another.

In these circumstances, he asked, would it have been possible to have treated E.P.D. liability as determined and fixed in the year 1923?—Absolutely impossible.

Witness then put forward a summary of the revision of the E.P.D. computation, which showed that very substantial changes were made as between year and year and item and item.

Sir John then referred to a letter written by Messrs. Blease & Sons on December 28th, 1923, in which they had stated that they had prepared an estimate of the liability for 1920. It went on to state that, taking the figures so far as they were agreed with the Inspector of Taxes, together with the claim for deferred repairs, and making provision for adjustments, the figure would not exceed £130,508. He asked what was in fact the figure arrived at for 1920, when the revision took place in 1927.

Witness replied that it was £294,327.

Sir John Simon: Whereas it was a liability in 1923, it was found in 1927 that it was not a liability, but on the contrary it was a cross claim of £294,327. I think you were going to say, Mr. Stewart, that the figure differed more than that?—The liability amounted to £103,406; that is the figure by which the £294,327 should be increased.

His Lordship: Do you mean that the £294,327 should be something like £400,000?

Witness: I mean that for purposes of comparison the difference between the estimate and the final result is not as the difference between £130,508 and a deficiency of £294,327, but a difference between £130,508 and a deficiency of nearly £400,000.

Sir John Simon: Was E.P.D. charged against the different firms and companies for different seven year periods, according to the particular date in the year to which ordinarily they made up their accounts. Witness agreed, and said that the period was seven years from the date of making up the last account prior to August 4th, 1914.

Mr. Pritt (re-examining): I do not know what date this original estimate of Sir John's is to date from, but I presume it dates from 1923. Is it right that the total difference between what Sir John calls the original estimate and the actual result is just over 1 per cent.—£50,000 on £3,000,000?—Yes.

Mr. Pritt: As between what was expected to result at the end of 1923 and what in fact did result in 1927 and 1930, was there any great difference?—No.

Mr. Pritt: Did you in fact yourself form any estimate at the end of 1923 as to how things really stood?—Not an actual estimate of the liability.

Mr. Pritt: A general idea?—Yes, of the position at that date.

Mr. Pritt: Then at the end of 1923 you did hold a general idea of the position, subject to revision?—Yes.

Mr. Pritt: And it actually came out in 1927 very much like your general idea of 1923?—Yes.

Mr. Pritt: I suppose that all the time from the end of 1923 to the end of 1926 or 1925 the matter was gradually getting clearer?—Yes.

His Lordship said that there was not much difference in the final result, but a considerable difference in the figures for the individual years.

Mr. Pritt said the witness had indicated that there was a good deal of moving about from year to year.

Finally, Mr. Pritt said he supposed the witness was never consulted in any way by the R.M.S.P. Company as to how much of their E.P.D. reserve they should transfer to their profit and loss account. Witness replied that he was not.

MR. C. S. LEWIS.

Mr. Charles Samuel Lewis (accountant to the R.M.S.P. Company) was the next witness, and his evidence was concerned mostly with the statements made in the prospectus issued in June, 1928. At that time, he said, he was the assistant accountant. On June 8th, 1928, when his chief, Mr. Cason, was on holiday, Lord Kylsant had sent for him and had said that he proposed to make an issue for the company, probably of 5 per cent. debenture stock. On that date the following was dictated:—

> "The audited accounts of the Company show that during the past ten years the average profits (including profits of the Insurance Fund), after providing for depreciation and interest on debenture stock, have been sufficient to pay the interest on the present issue more than . . . times over."

Witness was asked whether, before that document was dictated, Lord Kylsant had questioned him. He replied that Lord Kylsant had informed him that he proposed to make the issue for four purposes—to meet overdrafts which the company had had at that time, to provide funds towards the cost of the new building in Leadenhall Street, for repaying one or two loans to associated companies, and for the general purposes of the company.

Asked whether Lord Kylsant had handed to him the matter already referred to as having been dictated, witness said that Lord Kylsant had instructed him to fill in, after referring to the printed accounts of the company, the figure required.

In reply to further questions, witness said that he had taken the document to Lord Kylsant's house, but did not see Lord Kylsant personally on that occasion.

Further questions were asked with reference to some pencilled alterations to the passage already referred to, the word "profits" having been altered to "available balance." Witness said that he had handed the document to Mr. Cason on June 11th, 1928, and at that time there was no pencilled writing on it.

Sir John Simon dealt with figures representing the profits over a period of ten years, amounting to £5,800,000 odd. He said that the E.P.D. balance, the income tax balance and deferred repairs balance were brought in, and certain other figures were taken out. From a total figure of £7,767,000 there was deducted £2,180,000, representing ten years' interest on the existing debentures, and the figure of £5,800,000 odd was arrived at. The task, he said, was a very complicated one.

Witness said it was almost an impossible one.

Sir Patrick Hastings asked some questions with regard to the form of the profit and loss account for 1925. Evidence had been given by Mr. Cason, he said, that in practice, after the accounts had been prepared by the accountancy department, they were submitted to the Board, and, if the Board approved them, they were sent back, and submitted to Mr. Morland with a view to his certifying them. Counsel asked whether, when the accounts had been returned by the Board, the words "adjustment of taxation reserves" were written on them in pencil.

Witness replied that to his knowledge they were not.

Sir Patrick's point was that the words were added at the instance of Mr. Morland. He asked if the words were written in Mr. Morland's handwriting.

Witness replied that he did not know.

Sir Patrick Hastings: Do not you remember his writing them, when you and Mr. Cason were there?—I cannot actually remember him writing them, but I remember him discussing this alteration.

Sir Patrick Hastings: I want to get it clear that Mr. Morland said that in his view those words should go in, and that that was said in the presence of yourself and Mr. Cason?—Yes.

MR. D. I. CONRADI.

Mr. David Inglis Conradi was the next witness for the prosecution. He stated that he was secretary of the

Royal Mail Steam Packet Company and had been so for about a dozen years.

Asked about the date when he first heard of the proposal for a new debenture issue, Mr. Conradi said it was early in May, 1928. So far as he recollected he did not have any conversation with Lord Kylsant about the matter at that particular time.

Mr. Pritt: On June 13th, 1928, as we know from the minute book, you were present at a meeting of the Board of Directors at which Lord Kylsant was also present, and the minute shows there was a discussion on the new debenture issue and authority was given to the chairman by the Board to proceed in the matter?—Yes.

Mr. Pritt: The matter was made a little more definite on June 25th of that year. An issue was authorised of £2,000,000 in debenture stock and a prospectus was put before the Board and approved subject to slight amendment? Witness agreed that this was so, and he identified a prospectus which was described as "exhibit 43."

Mr. Pritt: That is signed by Lord Kylsant, "Approved June 25th, 1928"?—Yes.

Mr. Conradi agreed that there was slight amendment in the prospectus.

Mr. Pritt: I think before you saw that prospectus at the Board meeting you had seen an earlier draft, or indeed, I think more than one earlier draft. Was the first of them exhibit 44?—I may have seen an earlier one than this, I am not sure. I certainly saw this.

You are not sure whether you saw an earlier one than that?—Yes, I saw an earlier one.

The one you have in your hand is the one on which the word "profits" appears in ink, and "annual balance available" appears in manuscript, the word "profits" having been struck out. Would you look at exhibit 45 and exhibit 44. I think you might as well look at them at the same time—45 is plainly later in date than 44, is it not? It has got the words "average annual balance available" in print?—Yes.

The witness said it was correct that the document also had an addition to the effect that the company in common with other shipping companies had suffered from the general depression. The words were written on a slip and pasted in.

Mr. Pritt: Exhibit 43, Mr. Conradi, approved by the special court with slight amendment. Was that the prospectus in very nearly its final form?—That is the one approved by the special court.

It has not got the important words beginning "although in common with other shipping companies," but it has got nearly everything else?—Yes.

Mr. Pritt said that exhibit 44 was the earliest print of the prospectus that was now available so far as anybody could discover. It bore Lord Kylsant's initial and it had got a good many alterations in pen. It appeared that when this document was actually printed the amount of the issue had not been decided upon, and £2,000,000 was written in.

Counsel proceeded to refer once more to the alteration of the word "profits" to "average annual balance available."

Mr. Justice Wright said it looked as though two hands had done that, the word "annual" being in different writing from the rest of the phrase.

Mr. Conradi: I believe, but I would not like to swear to it, that that word "annual" is in my own handwriting. (Laughter.)

The witness assented to Mr. Pritt's suggestion that exhibit 45 was later in date than the other, as it incorporated all the manuscript alterations in exhibit 44.

Counsel remarked that £2,000,000 was now printed in, and the words "average annual balance available" were also in print. In leaded type at one part of the document there appeared the words, "Sufficient to pay interest on the present issue more than five times over."

Mr. Pritt directed the witness's attention to exhibit 46. This, he said, bore the words, "No underwriting commission has been paid or will be paid." Was that, he asked, in Lord Kylsant's handwriting?—It was.

Then Lord Kylsant has also written on the side, "I approve of the two suggested alterations which I have marked 'Kylsant'"?—Yes.

Having received that, did you cause the prospectus to be printed and published and circulated?—Yes.

And it was, in fact, circulated to the public?—That is so.

Exhibit 47 is special committee book No. 1 of the company. Does that show that the Allotment Committee met on July 4th and 5th, 1928?—Yes.

Was Lord Kylsant in the chair?—Yes.

And I think three other people were present?—Yes. Three other directors.

Was it reported that there were applications to the total value of £3,274,000?—Yes.

Mr. Conradi said that applications came, in fact, from R.M.S.P. stockholders and associated companies' shareholders to the extent of £1,300,000, and from the general public to the amount of a little less than £2,000,000. The Court of Directors approved the allotment of approximately £1,106,905 to the R.M.S.P. stockholders and associated companies' shareholders, and £893,000 to the general public.

A record was produced which Mr. Conradi said showed a proposal that the managing director's remuneration for any year, when a dividend of not less than 5 per cent. was paid on the ordinary shares, should be a commission of half per cent. on the gross receipts.

The witness identified an exhibit which was stated to contain a minute of the Court of Directors for May 9th, 1922, approving the accounts of the company for the year 1921.

After consulting a record relating to the meeting on December 14th, 1927, Mr. Conradi said that Lord Kylsant was in the chair on that occasion, and he reported that the Nelson Steam Navigation Company had declared a bonus of £200,000.

MR. A. H. MELBOURNE.

Mr. Arthur Henry Milbourne, who stated that he was private secretary to Lord Kylsant during the period 1912 to 1930, was questioned by Mr. Eustace Fulton concerning the issue of new debenture stock already referred to. He said that he remembered a question of the issue being considered in 1928. Lord Kylsant asked him to draft a prospectus for his consideration. He obtained an old draft and used it as a basis for the fresh one.

Counsel drew Mr. Milbourne's attention to the sentence, beginning "Although the company in common with other shipping companies." Witness said that appeared in the handwriting of one of his assistants. It was written by his assistant on his instructions. "A slip bearing these words," said Mr. Melbourne, "was handed to me by Lord Kylsant at his own house after an interview with Mr. Morland. He said that Mr. Morland had suggested something of this sort should be added to the prospectus, and asked me whether I thought it might be added."

Mr. Fulton: What did you say?

Mr. Milbourne: I said I thought if might be added with advantage.

And as a consequence that slip was written out by your assistant and pasted into the draft?—Yes.

This concluded the case for the prosecution.

Sir Patrick Hastings said he understood that Sir John Simon was going at the appropriate time to make a statement. Inasmuch as he (Sir Patrick) was only concerned on behalf of his client with a certain part of the issues it had been thought fitting that he might say what he had to say first.

Mr. Justice Wright: Who is first on the record?

Sir Patrick Hastings: Sir John Simon.

Sir John Simon said he was quite prepared to take whatever course the Court might direct. He would be very content if his Lordship thought it right to adopt the procedure suggested by Sir Patrick Hastings.

Mr. Justice Wright said he would certainly allow Counsel to take any course they desired, but he would have thought it would have been more convenient for Sir John Simon to have spoken first. "I may say at once," added his Lordship, "that I shall not say anything until I have heard both of you."

Sir Patrick Hastings said his Lordship would, no doubt,

bear in mind the application which was made in the early stages of the case. It was a great restraint on Counsel to have to sit so long through the hearing of matters that did not concern both of them.

Mr. Justice Wright said he thought that was a thing which frequently happened at trials.

SIR PATRICK HASTINGS' ARGUMENT.

Sir Patrick Hastings said he thought it was very important that there should be a close examination of the two charges. He was concerned, of course, mainly with the evidence to which he had directed cross-examination. His Lordship, he was sure, fully appreciated the charge that Mr. Morland aided and abetted Lord Kylsant in making, circulating, or publishing an annual report which he knew to be false in a material particular—in that the annual report concealed from the shareholders the true position of the company—with intend to deceive the shareholders. At the moment, of course, he was only entitled to address the Court on the evidence which had already been given, then he was going to submit with such confidence as he might that there was no case at all for Mr. Morland to answer upon either of the charges relating to the two years that were in question.

The profit and loss account, as he understood it, was the document really in question. The balance sheet incorporated a summary of the profit and loss account and he was anxious to see that he appreciated correctly the case that was made out against him. He understood it to be this—and he really would be glad to be corrected if he was wrong—that the misleading portion of the document was those lines in the account which said "Balance for the year including dividends on shares in allied and other companies, adjustment of taxation reserves, less depreciation of fleet." He understood that those were the words which were said to make this balance sheet misleading, and the Attorney-General having in mind, no doubt, the question of intention to deceive, had said with respect to the phrase, "Adjustment of taxation reserve," that in his submission it was a phrase which had been quite deliberately prepared, selected and chosen, as being a phrase which would convey nothing whatever to the mind of the ordinary person, but at the same time would enable anybody to say thereafter, if the need ever arose, "All this is covered by adjustment of taxation reserve." It betrayed, Sir William Jowitt had submitted, an uneasy conscience.

Mr. Justice Wright said that one must look at the matter quite squarely. It seemed to him that the first thing to consider was whether the document could be called a false document. If it was *prima facie* a false document he would have to consider very carefully whether if that were so the matter would not have to go to the jury, because, first of all, they would have to say "Yes," or "No." Was it a false document in fact, and, secondly, whether there was the intent. The question, "Was it a false document?" was, he felt, all that he had to consider at that stage of the matter, and it was on that that he desired Counsel's help. He took it that the Attorney-General's case was that it was a false document, not in the sense that you could put your finger on any specific matter, but that if you read it it did convey, or would be inclined to convey, to one's mind, a view as to the position of the company which was different from what the position actually was.

Sir Patrick Hastings said that it had been his intention to suggest that before the question of intention to deceive was considered the question of whether there was a false document ought to be decided.

Mr. Justice Wright: If, *prima facie*, it is a false document, then the question of intention and question of fact is clearly a matter for the jury. So I want to see first of all whether it can be regarded as a false document.

Sir Patrick Hastings said he had been going to say that one could not consider whether there was an intention to mislead unless one saw first of all whether the document was false. Though in a sense it might be said that whether the document was false might depend upon, firstly, whether it was strictly accurate in fact, and, secondly, whether the general inference to be drawn from it was not strictly accurate in fact.

Mr. Justice Wright said he desired the help of Sir Patrick and Sir John Simon on this question. This was a balance sheet and profit and loss account that they had before them. What was the function of a balance sheet and profit and loss account and what would you expect to find in it? It was addressed to the shareholders and the shareholders had the power of inquiry.

Sir Patrick said that matters of that sort had occupied the thoughts of Counsel for weeks past. An outstanding matter, he thought, was why was it that the prosecution, having called at any rate, one, and possibly more of the most distinguished auditors in the country, had not directed one question for the purpose of assisting the jury on the very matter which one would have thought was a matter of very great importance. So far, the only evidence which at all touched this matter had been given by a witness for the Crown under cross-examination. Counsel went on to say that he would defy anyone to tell the Court that there was the slightest evidence, but that every item in the balance sheet was accurate and truthful. He said exactly the same thing with regard to every single item in the profit and loss account. There was not one single thing to which anyone could take exception as a statement of fact in figures. That was the reason why he was satisfied in his own mind that the Attorney-General thought it right and proper and necessary to call attention to what he—in Counsel's view—suggested made the document, which was absolutely accurate in fact, and absolutely truthful in fact, misleading.

His Lordship said it astounded him that people should be left in ignorance of the true position, and he did not think it was right at all.

Sir Patrick Hastings said he was not venturing to suggest that it was. If the question of adequacy in form or in figures was required, hundreds of balance sheets could have been produced, but the Attorney-General quite frankly said that balance sheets did not help them.

The Judge: Of course, he could not say anything else. Apart from any technical aspect of the matter, it seems to me an extraordinary thing that this company should have gone on year by year, without a shareholder being told in terms what was happening. It may be that it is not a question for report at all.

Sir Patrick Hastings said he was glad his Lordship had put the matter in that way, because he was anxious to deal with it. Could it possibly be said that it was a question of the truthfulness of the balance sheet or profit and loss account if the figures were quite accurately and properly given? It had been established beyond all doubt that the words used were those which would meet with the approval of the most distinguished auditors and qualified people in this country. How could it be said that it was not truthful, accurate and proper?

The Judge remarked that an auditor might say that it was a matter between the shareholders and the Board of Directors. It might be it was a matter which did not concern them, and it was one of the things which would have to be considered.

Sir Patrick Hastings said that possibly the evidence given by Lord Plender was not within the Judge's recollection. He (Counsel) would refer to what Lord Plender had told them was the position of an auditor, and also what that gentleman considered was the result of the information conveyed by the profit and loss account in future. It would be necessary to read some portion of the evidence given by Lord Plender, as he was the only witness who dealt with the matter. Lord Plender was questioned regarding secret or inner reserves. It was suggested to Lord Plender that it was the practice of many of the largest commercial enterprises in the country to have a system of inner or secret reserves, and he agreed. He also agreed that it was quite usual for large commercial and industrial undertakings to

set aside out of their prosperous years sums to secret or inner reserves. Lord Plender also approved of the suggestion that it was quite a usual and proper thing for companies to set aside large sums against their liability for E.P.D. They knew that a liability would mature some day, and in the ordinary course of events the reserves would be set aside out of the profits of the year. In those cases, when such reserves were not required, they would properly be brought back into the profits of other years, and would become a regular credit. The Attorney-General had said that up to a point money being brought back in many cases would not be disclosed in a profit and loss account as having come from secret reserves. Lord Plender had told them that sometimes no reference was made, but generally it would be found that an indication of such a practice would appear that some transfer had taken place.

Counsel went on to say that he cross-examined Lord Plender as to the proper intention, and he asked, if the secret or inner reserves were used, whether there came a time when the auditor should say that some indication should be given to the shareholders that some transfer was being made. To that question Lord Plender replied "Yes."

His Lordship said that the first stage was the appearance in the balance sheet of the sum which was being put to reserve. It must appear in the balance sheet somewhere. It must appear under some heading. It was only called an internal reserve because it was not specifically described as a reserve. Still, it had to appear under some heading. Lord Plender had said that there must be a reference in the balance sheet to sums put to reserve.

Sir Patrick Hastings pointed out the cross-examination of Lord Plender had depended on the case submitted for the prosecution. He had to see whether the case submitted at that Court would be similar to that put forward at the Police Court. He had in fact to see whether it was suggested that it was a proper or legitimate thing to take a secret reserve and put it into the balance sheet, or whether the Attorney-General would say that it was legitimate in some cases, and up to a point, and thereafter whether it should be brought in without disclosing the fact or not. In either case he was prepared to deal with the matter through Lord Plender. The Attorney-General made it quite plain in his opening to the jury that he adopted the course that it was not necessary for the defence to establish that it was legitimate to put sums to a secret reserve, and up to a point to bring them into the profit and loss account without disclosure. Owing to the case submitted by the Attorney-General, the first half of the cross-examination he (Sir Patrick Hastings) would have put to Lord Plender became unnecessary. They started the case with the assumption that up to a point a secret reserve in a balance sheet was legitimate, and transfers from that secret reserve to profit and loss account without disclosure, up to a point, were also legitimate. The Attorney-General, however, had also said that there came a time when that must stop. He asked Lord Plender whether the practice was followed by firms of the very highest repute, and he agreed.

Counsel said that he put the specific question, "In your view no exception could be taken to that?" The reply was, "As a principle, no exception could be taken."

The Judge: That was a guarded answer. As a principle, no exception could be taken.

Sir Patrick Hastings said that one started with the assumption that up to a point secret reserves were legitimate and almost ordinary. Transfers to the profit and loss account were also ordinary and legitimate, but there came a point, which the Attorney-General admitted might be very difficult to determine, when some indication must be given. His cross-examination of the witnesses for the Crown was based on the fact that it was no use looking at a balance sheet and saying it was not accurate, because it did not disclose secret reserves. The evidence for the prosecution, and the opening for the Crown, was that it was legitimate up to a point. It was necessary for him, therefore, to cross-examine Lord Plender as to what was the duty of the auditor when that point arose. He was concerned to see whether the time had arrived, and whether the intimation which was given was one that when a person looked at it he would see that it conveyed the necessary inference. With that end in view he asked Lord Plender whether there were some well-known phrases used by auditors.

The Judge: You said "by auditors," but I meant well known to members of the public.

Sir Patrick Hastings: Lord Plender could only answer for himself and his own profession, and I was concerned to see that an auditor would consider the usual terms which, in the view of the profession, ought to be indicated. I desire to bring to your Lordship's mind the phrase which seems to be so important. "Adjustment of taxation reserve," said the Attorney-General, was a phrase quite deliberately prepared and selected and chosen as one that would convey nothing whatever to the mind of the ordinary person, and was dishonest. I asked Lord Plender whether it was usual among accountants to employ such phrases as these, which are not uncommonly used by auditors in profit and loss accounts. The phrases are "E.P.D. adjustment," "After adjustment for E.P.D.," "After adjustment of income tax not required," "Taxation adjustment," "Adjustment of taxation reserve." I asked whether all these are phrases which are not uncommonly used by an auditor to indicate transfers from taxation reserves. The reply was, "That is so." It is a phrase which it is said that Mr. Morland deliberately prepared, selected and chose as a phrase that would convey nothing whatever to the ordinary mind. The next question I put to Lord Plender was, "Those transfers may be either small or large," and he replied "Yes." The Attorney-General said "I do not doubt that some reserve is by no means infrequently brought into the profit and loss account, either to do away with, or diminish a loss, or to turn a loss into a profit." That is this case. Lord Plender accepted that statement by the Attorney-General. I also asked Lord Plender, "If you saw such words as these in a profit and loss account, you would understand from them that there had been a transfer from the specific reserve, E.P.D. or otherwise, which might be small or large?" and he replied "Certainly."

Sir Patrick Hastings went on to declare that it had been alleged that Mr. Morland had used the phrase which conveyed nothing to the ordinary man. The actual balance sheet was produced when Lord Plender was in the box, and it contained the words, "Adjustment of taxation reserve," and the question was put as to whether people would understand from that whether there had been a transfer from the taxation reserve account. He asked his Lordship to say that Mr. Morland should not be allowed for one further moment to stand in the dock. Mr. Morland had used the regular, recognised phrase amongst accountants. Perhaps it might be said an accountant would understand the phrase when he wrote it or read it, but it was just possible it might be a question of fact whether that strange person who was unknown to any one of them, and called an "ordinary person," would understand it. That was not the test to apply in that case. They knew that the balance sheet went to shareholders representing millions of pounds of money. It went to people in the City, such as solicitors, auditors, officials, rich men and poor men, and persons in all parts of the country. Every one of those persons, if they had the slightest doubt as to the position, could have gone to the general meeting and asked what was meant. An auditor was entitled to assume, just as Lord Kylsant was entitled to assume, that as the words were in the common form, the recognised form, and the well-known form, that if they were not understood and anyone wanted to know more, they could ask a question. Lord Kylsant might, if a question had been put to him, say that he did not want to go too deeply into the matter,

owing to competitors. Mr. Morland, however, could not assume that. The words he used were in the recognised form made use of by men in his profession.

Counsel pointed out that after Lord Plender had given his evidence on that point, not a single question was put by the Crown to any accountant on the matter, and they were not asked to disagree in the slightest with the evidence which Lord Plender had given. Accountants who had been called as witnesses had not been asked from first to last if there was anything in the document which could mislead any person of ordinary intelligence who might be expected to peruse the account. Sir William McLintock went into the box and gave evidence on behalf of the prosecution, and not one single question was put to him to the effect, "Do you disagree with the view that this is a perfectly good indication of a material fact." A partner in the firm of Messrs. Blease was also called, and no suggestion was made to him that it was not a perfectly proper document. As a result of the cross-examination of Lord Plender, Counsel said he would suggest that that witness had said that it was proper. After that evidence, he invited his Lordship to say that it could not be right for one moment that Mr. Morland should be standing in the dock.

FIFTH DAY'S PROCEEDINGS.

Sir Patrick Hastings, continuing his argument, said that since the Court adjourned the previous evening, he had devoted some attention to the questions which the Judge was good enough to put in the course of his (Counsel's) submission. The first question he had considered was as to what was the province of a profit and loss account. One could not get a better general definition of the purpose of a balance sheet than what was contained in the certificate. That, as his Lordship knew, was practically in the statutory form, and was attached to the auditor's certificate. It stated "the balance sheet is properly drawn up so as to exhibit a true and correct view of the state of the company's affairs, as shown by the books of the company."

The Judge: The requirements are more stringent now under the Act of 1929.

Sir Patrick Hastings remarked that under sect. 124 of the new Act there was a statement as to what the certificate should contain. The Act said, "Every balance sheet of a company shall contain a summary of the authorised share capital, of the issued capital, and its liabilities and assets, together with such particulars as are necessary to disclose the general nature of the liabilities and assets, and to distinguish between what are respectively the fixed and floating assets and state how the value of the fixed assets has been arrived at." That was the new Act.

The Judge: Which, I suppose, does not apply to chartered companies?

Sir Patrick Hastings: No.

Counsel went on to say that there was a little further guidance before the Court in the matter of certain documents. Lord Plender was called as a witness, and he gave evidence which was desired to be equally applicable to either the prosecution or the defence. Lord Plender put in a little red book when he was in the witness box.

The Judge: He did not put in any red book, but he was kind enough to give me a copy. I am sure the Attorney-General would not object to your referring to any passages in it. I do not think it would be correct to say the book was put in as an exhibit, but it was given to me for my own personal information.

Sir Patrick Hastings replied that the book in question was, in fact, read during the progress of the case at the Guildhall Police Court, and was approved by one of the witnesses for the Crown as being an accurate statement. In that book was set out quite clearly Lord Plender's view of a balance sheet. The book stated that every balance sheet was a summary of facts and things, and should represent what, in the judgment of the directors, was a fair statement of the financial position, having regard to the object for which it was formed. It should also be drawn up in such a manner as to afford shareholders an adequate means of ascertaining by perusal and inquiry the value of their interest, without disclosing information likely to cause loss or injury to the business. It was the province of the auditor to apply his trained mind to a critical examination of the balance sheet, in order to see whether it substantially fulfilled those conditions.

An auditor was not required to certify to an exact state of affairs, but he must be satisfied, in the light of the evidence available to him, that the balance sheet was properly drawn up in accordance with customary usage. There could not be a fairer or more accurate view of the purposes of a balance sheet and the purpose underlying its preparation than the statement to which he had just referred. With that assertion everyone would unhesitatingly agree. In that case he was bound to call the Judge's attention to the fact, and it was of the greatest importance, that not one single professional man, although certainly three and possibly four accountants had been in the box on behalf of the Crown, had suggested that in any respect, after examination of the figures, the balance sheets and profit and loss accounts in question were untrue or misleading in any way whatsoever. At the very outset of the case, by way of interruption in the Attorney-General's opening, he said that his case was that every statement in the balance sheet was, by proper inference, absolutely true. He hoped to be able to satisfy the Judge on that point in a few minutes.

The Judge said that what Counsel was saying, in the presence of the jury, might be helpful to them in their deliberations, if they had to deliberate on the facts.

Sir Patrick Hastings: The question is whether there is any evidence at this moment that the document is untrue.

The Judge: The jury have the right at any time, having heard the case for the prosecution, to say that they are not satisfied, subject to the right of the Crown to address them before they come to the final decision. That is a right which is not often exercised. A jury can stop a case. It is a large matter to ask a Judge to stop a case. He must be satisfied, as a matter of law, that there is no evidence. I mention that, because when you talk about matters of this sort, they are eminently questions for a jury in the City of London. Of course, the question of intent is always one for the jury. If it is said that these documents are sufficient and proper, according to the provisions of the Act, then that is purely a matter for the jury. It is their function. I must not usurp the functions of the jury.

Sir Patrick Hastings: I would not invite your Lordship to do so. But I am bound, in the view we take of this case, to submit to your Lordship the matters which are proper for your Lordship's consideration alone, and one is that there is no evidence at all that this document is false.

The Judge: To say that there is no evidence at all is to say something which is a proposition of law. It may well be that you have a document which in every detailed examination, point by point, is technically correct, and yet such a document may create a false impression. Then, it is always a question, if that is a possibility, is not it a question you have to answer? You may have to answer two questions, and possibly more. The first is, was it such as to reasonably create a false impression, and, secondly, was it intended to create a false impression? Those are two separate questions, each vital. The mere fact that you can analyse a document, point by point, and say there is nothing inaccurate is not conclusive. It is for the jury to answer.

Sir Patrick Hastings said that in his submission the case went much farther than that. There was no possibility, he urged, on the documents and the facts as they now knew them, of the documents in question being untrue.

The Judge: The Attorney-General has opened a view of the documents which may merit the consideration of the jury. He says that they may involve a view that the company was trading profitably. I would hesitate very much indeed, in a case of this sort, to withdraw the matter from the proper tribunal here, which is the jury. They

are the judges, unless I may say as a matter of law there is nothing that they may consider.

Sir Patrick Hastings stated that he would accept that proposition, but he was directing himself simply and solely to the point that there was nothing which the Judge could leave to the jury by reason of what was the necessary legal effect of the documents and the facts as they were now known. The Judge was quite right in saying that the real underlying principle was one of law. There was, however, a vital distinction between a criminal and a civil case. In a civil action, a jury were not entitled to stop a case without the party against whom it was being stopped claiming his right to reply, and his right to require a Judge to sum up.

The Judge said he had been leaving that over deliberately. He had never known a case in which the jury indicated a view that they ought to find a verdict for the defendant in which there had been any further proceedings. He deliberately left over the question whether it was competent or not. All he could say was that in practice a certain course was followed.

Sir Patrick Hastings replied that in a comparatively recent case that point arose. He referred to the case of *Hobbs & Tilling*, and said that in a civil case it was held that there was a right on the part of the opposing party to require the Judge to sum up. That was not so in a criminal case, as there were no opposing parties. That was the vital distinction. In a criminal case a jury might say at any moment that there was no case that required answering. In a criminal case also there was a far more important function for the Judge to perform, and that was that it was not only within his province, but it frequently happened that he said that a case should not be left to the jury. In a civil case a Judge might hold that there was a scintilla of evidence, but it frequently happened in a criminal case that the Judge said that, although he could not say as a matter of law there was not a scintilla of evidence, it was in his opinion a case which should not be left to the jury.

His Lordship agreed that that was done, but he pointed out that the more common practice was to give the jury an opportunity of expressing their views.

Sir Patrick Hastings observed that that still left open the question of whether there was any evidence at all against the defendants. He added that the defence attached importance to the point he was submitting, and it was only fair that the matter should be submitted to the Judge in a short and concise form. From every aspect of the case, so far as it related to Mr. Morland, the only two suggestions made on behalf of the Crown were based upon the words "adjustment of taxation reserves," and the statement made by the Attorney-General, who said, "Obviously there comes a time"——

His Lordship: I think I remember that.

Sir Patrick Hastings said that those were the two points he had to meet. It had been said that obviously there came a point at which the continued and deliberate and excessive utilisation of hidden reserves quite manifestly presented an untrue picture of the company, viewing the enterprise of the company as a continuous and continuing whole. That was the statement made by the Attorney-General in opening the case, and he thought it was the only case that could be suggested against his client as to make it even arguable in law. The argument of the Attorney-General was, however, based on a false supposition. It must be apparent that the reference made to secret reserves was quite fallacious. The only witness who had ever made use of the term "old reserves" was Sir William McLintock. That gentleman, when he was making his inquiries, never asked Mr. Morland a single question regarding the matter. Such a procedure might have rendered it impossible for such a statement to be made. The secret reserves were two. One was the income tax reserve. That referred to money obtained in a particular year, and paid in that year. The other reserve was in connection with E.P.D. which was not a secret reserve at all. Sir William McLintock was asked whether, in transferring the E.P.D. amounts in 1926 or in 1927 the company were consciously drawing upon an old reserve. He replied in the affirmative, but that was wrong.

The Judge remarked that the reserve was sometimes called secret, but he thought the matter was clear, and was understood by the jury.

Sir Patrick Hastings said he thought the Judge would appreciate the difference that evidence made to the case. To say "the company is inevitably drifting on the rocks" was to submit an absolutely untrue view of the company's prospects. It was established beyond all question that at the time when the profit and loss account was issued, quite apart from the figures which had been discussed in the case, the company had in its coffers over and above everything that was required to pay the dividend in question, a disclosed reserve of one and a half million pounds. They had a reserve in the insurance fund of £1,300,000, and there were reserves in the subsidiaries totalling £2,000,000. There was, in fact, a total of £4,750,000, over and above, not allocated to any purpose, and it could be used quite irrespective of the matters which had been dealt with in that case. The financial position of the company had no relation to the statement that it might be said to be drifting on the rocks.

The real position of the Royal Mail Steam Packet Company, and the sooner it was made clear the better, was that like every other shipping company, like the banks and the bankers, if things did not get better, the shipping companies were and must be, and the bankers possibly would be, driven on the rocks. Was anyone going to say in a Criminal Court that it was misleading because the auditor did not declare to the shareholders, "I warn you that unless business improves, this company, like every other company, must be ruined." That was the allegation. It was an appalling and a dreadful proposition to bring forward in a Criminal Court. If Mr. Morland, having signed the balance sheet in 1926, was guilty of a criminal offence, then there was not one single accountant in the City, or indeed in the whole world, who was not in the same position. Without wrecking the company, he could not have gone farther than he did. It could not be suggested that a man of Mr. Morland's position was to be tried in a Criminal Court because he did not say something additional. Was it suggested that he ought to have said that the company had paid its dividends properly, that it had got reserves of £4,750,000, and that unless there was a turn in trade and in the shipping business with Germany, France and America, then it was inevitable that the Royal Mail Steam Packet Company could not indefinitely go on? Such a statement would have ruined the company. It would ruin every company in the world, and yet that was what was being asked in that case.

The Judge: Clearly these are considerations which may well be addressed to the jury. I am not trying this case.

Sir Patrick Hastings: Is not the true fact that there is no evidence that this could be misleading? I ask your Lordship to say that really there is no evidence at all which could be properly left to the jury. I ask your Lordship to say in the case of Mr. Morland, in law, there is no evidence in your view of the case to be left to the jury.

Sir John Simon said he desired to make a short submission on behalf of Lord Kylsant. He would not go over the ground which was so familiar to the Judge as to the functions of a Judge and jury in such matters. What he desired to do was to see if he could, by any chance, be of any assistance to his Lordship on the particular section under which the prosecution was launched. The inquiry before the Court was not whether disclosure would be useful, or helpful, or desirable, or any of those things.

The Judge: Or even improper.

Sir John Simon: It is whether a particular section of the Larceny Act of 1861 is a section which, now that we have come to the end of the case for the prosecution, can be said to give solid support for the continuance of this case. My submission, and I will try to put it in a single sentence, is this, that what sect. 84 prescribes is not economy of information but material falsity in the information which it does give.

The Judge: Economy of information is quite beside the question, unless what is said, having regard to what is not said, produces a false impression.

Sir John Simon went on to say that he desired to put the matter as clearly as possible. For the moment what he was submitting could not be answered by the statement that the jury would take those matters into account. He invited the Judge's attention to the section of the Act. He understood the qualification which his Lordship had in his mind, but the Judge would see that sect. 84 of the Larceny Act was a section which was not aimed at penalising economy of information or designed to stimulate the giving of information. It was a section which penalised that which was stated, if the man who uttered it knew that the thing so stated was false in a material particular. There were occasions in the Civil Courts when what was required by law was disclosure. In the course of the opening of the case the Attorney-General made reference to that by saying that what was wanted here was more disclosure. He could understand the sense in which those considerations came in. It was fundamental at that stage for the Judge to consider whether sect. 84 of the Act should not be limited in its operations. He did not desire to make any clap-trap proposition, but they were administering law in a criminal case. He referred to the ruling in the case at that Court by Chief Justice Coleman in 1869, when it was held that a man might be liable in a Civil Court, but that would be insufficient in a criminal case.

His Lordship remarked that the law was accurately stated in the case referred to. The difficulty at that stage of the case was this: A man might publish a statement which he thought was in complete compliance with his duty, but the fact might be false. It might be a complete answer that he had no intention to deceive, although the statement was false.

Sir John Simon agreed and pointed out that he was limiting himself to the character of the statement in question. He was not addressing the Judge on that point, but on an important matter that here, in a criminal charge, it could be said that sect. 84, rightly read, did not prescribe the punishment of the criminal law in respect of what he had called economy of information, but was specifically directed to what was affirmatively stated and false in any material particular. He did not think his Lordship would exclude those words from his consideration.

The Judge: No, certainly not.

Sir John Simon added that he was anxious that another matter should be prominently in the Judge's mind. Lord Kylsant was before the Court on three counts. Mr. Morland was only charged in two of the counts, but it would be observed that all three counts bore the same words and came under the same part of the one section. In each of the three counts the test was the same. It was not a question of economy of information. It was not the absence of full informatory information, which was the point at issue. Had there been proof at that stage of the case which would justify the Judge in keeping the defendants in jeopardy? He was not weeping any tears about the matter, but should the defendants be kept in jeopardy when the only charge was the publishing of a statement which meant an affirmative statement——

The Judge: It means a document.

Sir John Simon: You have to consider what is affirmatively stated—published or printed—and it is not a point on the criminal charge to say in 1931, and looking back with all the wisdom of prosperity regarding the economic position of 1926 and 1927, that there were many things which it would have been wise, prudent and proper to have stated.

The Judge: It is not a question of prospects.

Sir John Simon said that he would put the observation more in the form of criticism.

The Judge: The material particular which it is said was false must have reference to existing facts.

Sir John Simon: Not prospects.

The Judge said he gathered the matter was covered by the form in which the particulars, such as they were, appeared in the indictment. The material particular in which it was said the statement was false, was as to the true position of the company.

Sir John Simon: Yes.

The Judge: Concealed the true position of the company. Whether that was done or not is a question for the jury.

Sir John Simon went on to say that he desired to carry his argument further. What he had submitted, firstly, was that as a point of construction of the section what was penalised was not the limited character, perhaps the unduly limited character of the information given. That did not matter. It was not a section enacted to prescribe and call for information. It was a section solely addressed to the falsity of the knowledge of the accused, of course, with intent of the matter which was stated. If that were not so, then the case would have taken a very different course from the beginning. If the prosecution was not limited to that action which was concerned with what was affirmatively revealed, as distinguished from penalising what was not revealed, a different state of affairs would arise. The new Companies Act, which did not come into that case, was framed as the result of a Government Committee's recommendation. In that committee's report the whole question as to whether or not companies should be called upon by law to state more precisely what were their reserves and secret profits was dealt with. A vast body of evidence was given to show what serious financial results would follow if that was prescribed by law. So far as the new Companies Act was concerned, the significance was that when Parliament came to deal with the matter, it still abstained from requiring by law under penalty that there should be disclosure which, as he considered, was a ground of complaint in that case.

The Judge: Some day someone will have to consider what is the exact effect of the new Act.

Sir John Simon said that he had made his submission regarding the construction of the section, and the Judge had warned him that there might still be left open the question that what was affirmatively stated was, none the less, a false representation. He was entitled to point to the fact that as the evidence for the prosecution now stood, taken as a whole, there was in his submission no adequate material upon which the Judge would think it proper that the trial of the indictment should go further. He was not confusing the functions of the Judge at that moment with those of the jury at a later stage. He submitted that it was a function of the Judge at that stage in a criminal trial first to satisfy himself as to the true construction of the section under which the prosecution was brought, and, secondly, to ask himself whether, taking the evidence as a whole, there was any material. His submission was that really, as matters now stood, there was no adequate material. The question was not how the Attorney-General opened the case.

The Judge: Of course not.

Sir John Simon: I do not mind how the Attorney-General opened it. The question is, what is the present situation on the evidence given by the prosecution. I do not mind that Sir William McLintock, speaking, I am sure, with sincerity, said that in his view, as far as the E.P.D. was concerned, it came from old reserves. I demonstrated that was untrue and your Lordship will realise that it is Sir William McLintock who has misunderstood the nature of these things. It is now, in my submission, so clear that your Lordship must not allow the liberty of a British subject to be left in jeopardy. It is clear that the different matters which were brought into credit in the profit and loss accounts in 1926 and 1927 in fact did not come from old free reserves, but in fact were profits which were available for distribution at that time, and not before.

The Judge: That is going into the facts.

Sir John Simon: If your Lordship thinks it right to leave the matter to the jury, what has happened is not to the prejudice of anybody. I am bound to submit the point. I submit most strongly that the section is addressed, not to the encouragement of disclosure, not to the production of information, but simply and solely to penalising as a crime that which is false in a material particular to the knowledge of the author.

The Judge: I wondered at one time whether the true construction of the section was that specific words had to be pointed to which were false. On reflection, it seems to me that it is a narrow view to take. No one has suggested that, and it confirms the decision I have already come to.

Sir John Simon: I do not conceive that specific words have to be pointed to.

The Judge: I have considered the matter, and in my own mind I have come to the conclusion that it was too narrow a view.

Subsequently, the Judge said he had given what might be called a "public" view of the matter, and Sir John Simon added that he was sure it had not been done with any "intention to deceive." (Laughter.) He went on to say that he did not desire to say more. He appreciated what the Judge had pointed out, that the Jury were entitled to say if they did not wish the case to proceed.

The Judge: I think the case must proceed.

SIR JOHN SIMON'S ADDRESS.

Sir John Simon then addressed the jury on behalf of Lord Kylsant. He said he was sure the jury would thoroughly understand that the discussion which had taken place between Counsel representing the defendants and the Judge, and the latter's decision, had arisen because it was very desirable at that stage to have the issues clarified. In addition, it was their duty as Counsel to get the Judge's ruling as to whether the matter should stop finally at that point. The Judge had taken a certain view, and he (Sir John Simon) was not embarrassed or disturbed. The Judge preferred to leave the bringing of the matter to a conclusion to the jury after they had heard enough to satisfy themselves that they ought not to convict the defendants on that criminal charge. It was very easy to spend a little time in rhetorical expressions, but he desired to point out how serious a matter it was, and how humiliating it must be to men who had borne a very honourable name to have to stand in that place whilst a criminal charge was investigated. The defendants, after all, looked to the jury as a body of fellow citizens who had been called there by the fortune of the ballot to do what was right, and to listen patiently to what was said on their behalf.

"I am going," said Sir John Simon, "to call Lord Kylsant. It is right that you should hear from his own lips what he has to say as to this most injurious imputation that he has been acting with intent to deceive. Before I call him I think you will excuse me if I occupy your time a little in bringing together what are the salient facts and features of the case. In my submission, when those facts which have now been ascertained are placed as clearly before you as they can be placed, and when the outstanding facts of the case are disentangled from this enormous mass of paper, details and figures, my submission is that trying Lord Kylsant here on this criminal charge, you are entitled to say, in the absence of firm proof such as would satisfy a reasonable man, in his own case, that there is no guilt. My submission to you is that the ultimate conclusion of this case will be found not to be in doubt. Let me use such powers as I have to make clear what, as it seems to me, are the salient facts of the case. You have got a great company which has existed now for nearly 100 years. The Royal Mail Steam Packet Company is one of those companies which has got a charter from the Crown, and is therefore not a company of mushroom growth, but it has developed and become one of the great commercial institutions of our land. It has faced fierce competition, subsidised competition, and has kept its flag flying in good times and in bad times over a great series of years. I do not think anybody will doubt that it owes, and that every shareholder in it owes, a great deal to Lord Kylsant. It was perfectly possible for this great company to have distributed in its years of greater prosperity dividends far bigger than were distributed."

Counsel said he would like the jury to have before them a tabulated statement which he had produced showing the profits earned by the Royal Mail Steam Packet Company. That statement covered the seventeen years of the Company's history which were mentioned in the prospectus and showed what in fact was the rate of dividend which in the course of the very prudent management of the company was in fact paid. "Is not it a very striking thing that over a very large number of years you in fact have a company which might have paid 13 per cent., 17 per cent. or 11 per cent., and which, until you come to the two years of 1926 and 1927, which have been selected for a criminal charge, had been sailing its steamers to South America in competition with the United States, making other voyages, and with lines in different parts of the world, and has been able in the face of most intense competition to achieve great prosperity. Why was it that it did not distribute everything it might have distributed in those years of prosperity. Manifestly, because you are dealing with a branch of trade which has great fluctuations."

Some scientists and students held the view that there was really a cycle in the prosperity of shipping companies, but that was not a question to be decided in that case. Many practical people, and many business people, thought such was the case. The jury would be quite satisfied when they had heard Lord Kylsant, who had a lifelong experience of shipping, that such was his opinion. Experience went to show that there had been such a cycle in the past. Therefore, if directors conducted their company on conservative lines, they abstained from paying out the whole of the profits which were earned when they were on the crest of the wave. By so doing they would be able to maintain a general level of dividend when the wave was in the trough. The view was taken by many people in 1927, including some politicians, that there was a cure for unemployment, and that within a certain period things would mend. Looking back over 1928, 1929 and 1930, over what might be called the economic blizzard, it could be stated that the trough of the wave might last an exceptionally long time.

During the course of the case, he had only attempted to make one feeble joke, and that was when he stated that "profit" in a profit and loss account was not spelt "prophet." He had a reason for making that statement. If the cycle of good trade had returned, as many people in 1927 thought it would, and things had gone on on an even keel, then, instead of Lord Kylsant standing in the criminal dock, he would have been acclaimed as one of the men of British business who, in prosperous times, pursued a conservative policy, and in evil times took advantage of that conservative policy in order to maintain his dividends, and he would have been pointed out as a man who had kept his fleet and his company out of a period of difficulty. What was the position in 1930, three years after the facts which were now being investigated. Unhappily, contrary to the confident predictions of politicians, and contrary to the expectations of many other people, there had been catastrophe and calamity in trade. That had happened to a large part of the trading community of the country.

It was true that in 1930 the situation of the Royal Mail Steamship Company was such that it had to apply for itself and its subsidiaries for the further assistance of the Credits Committee which the Government financed. That course was necessary in connection with the Government being asked to continue their guarantees to the banks for some time longer. Thereupon Lord Plender, the Chairman of the Committee, properly said he would like an independent investigation. That investigation was not undertaken for the purpose of finding out whether the

accounts of 1926 and 1927 of the Royal Mail Steam Packet Company could be used as a basis of a criminal charge, but for the purpose of ascertaining what, in 1930, were the prospects of prosperous trade for the company. The Government guarantee, very properly, was not likely to be offered to people unless they could show a possibility in the times coming which would justify the Treasury and the taxpayer in lending money. Sir William McLintock, as the jury knew, made a great report, but that had nothing to do with the case at all.

Sir John Simon added: "I am bound to say that it is most unfortunate that Sir William McLintock, a distinguished man, should have taken the view that there had been a drawing upon old reserves in the sense in which that view was presented when this prosecution was started. I am going to remind you of what, I think, has been proved to the satisfaction of every one of you during the last two or three days. There cannot be the slightest question that when this case was first started at the Guildhall, and afterwards here, until the gentlemen whom we have heard cross-examined during the last two or three days had given their evidence, there was a widespread idea that this company in its later years was living on what has been described as its old 'fat.' It was doing no such thing, except in this sense that it was pursuing the policy of equalising its dividends by saving much of its profits in good years in order that it might be able to maintain the rate of dividend in less prosperous times. Those dividends that were paid in those later years were profits, every penny of them. I defy any sort of successful contradiction on this point, or for anyone to say that every penny which was distributed was not profits. They were distributable profits, and could not properly have been distributed before. They were rightly distributed then. It certainly cannot be a matter of reproach that the company attempted to equalise dividends."

Proceeding, Sir John Simon said that the directors of the company were perfectly entitled to keep profits for equalising dividends. In the years that were prosperous they were entitled to distribute a less dividend. It was not done in order to put a balance into a drawer and lock it up, but in order that the balance might be available and might justify the maintenance of dividend in later years. It was a direction of the charter under which Lord Kylsant was acting, and one of the powers that the directors had got for the good of the company.

It was easy to say, especially easy perhaps to those who had not had occasion themselves to direct great complicated concerns like the company in question, that it was not a proper thing not to distribute all their profits, but that the shareholders ought to be told how much profit or profits had been made. It was an easy thing, perhaps, to say that our company had had a booming year, and if the shareholders liked they could have a dividend of perhaps 15 or 17 per cent. If that was done, the first thing that would arise would be to take there and then a larger percentage of the profits. Counsel said that he would assert in the jury's presence that they would find nobody who really spoke with authority who was not prepared to recognise that it was a proper thing to attempt to equalise the dividends of the company they were directing. Nobody was prosecuting Lord Kylsant because in a special good year he only proposed a dividend of 5 or 6 per cent. to the shareholders. It was said that he was cognisant of a false statement in a prospectus which was misleading to the shareholders. What was the other half which was the exact corresponding position? The position was that when they came to times when the company sank below the average level, were they then to go about announcing at every shareholders' meeting, "I want you all to appreciate that I am now drawing upon the moneys which I made, without telling you, some years ago, and that is the only way in which you can have your dividend." What would have happened then? People would imagine that the ship was sinking and rising, and was about to flounder.

Sir John Simon said he would like the jury to look at one of the exhibits whilst he was referring to it. He said they would observe that it showed what was never shown clearly before. It was not a case where the company went on paying 4 or 5 per cent. for pure justification, but where it was able to do so because of the very policy of equalising dividends which was the intention of such a great corporation. Where would the banks of the City of London be if every year they were to state publicly what had been the degree of prosperity or otherwise during the twelve months? Did the jury think that they went along with a level standard of profit year after year.

Counsel said he wanted to call the attention of the jury to the case where it was recorded by those responsible for the prosecution at the time when it began. He was entitled to read a passage from the shorthand notes of the first day at the Guildhall. The jury would appreciate why it was that the defence suggested that some particulars might be useful. They had to take into account also that there was no cross-examination at the Police Court. The Attorney-General was entitled, of course, to come there and present his case, and Counsel was not complaining of it in any way. Lord Kylsant and his co-defendant had very great reasons to be grateful that the prosecution was in the hands of a man who was maintaining the traditions of a great office. The jury had to examine the case which Lord Kylsant was supposed to have to meet when the summonses were issued and when Lord Kylsant surrendered before the Lord Mayor of London. Quoting from the shorthand notes, Sir John Simon said that the submission for the Crown was that the "balance for the year, including dividends on shares, &c.," was not a clear representation to the shareholders. It was also said that the adjustments of taxation reserve were relevant to the year. He wanted the jury to turn to the balance sheet of 1926, and refer to a sum of £439,000 odd. Counsel said he made one claim before he called any witnesses at all. He was claiming that every one of four allegations made had not only not been proved in the Court, but every single one of them had been disproved by the Crown witnesses.

Taking one of the four allegations, Sir John Simon said that the first was that it was a clear representation that the company had earned in the year on its trading £439,000 odd subject to some modest adjustments, and so on.

The very first question that Counsel put to Sir William McLintock was, "Do business people and accountants draw distinction between the profit and loss account and the trading account?" and Sir William had replied that they did. A trading account was an account which showed what they had earned on the one hand and what it had cost them on the other. That was perfectly clear.

Sir John Simon went on to say that he was perfectly content that the jury should at such time pronounce their view on the matter, but it had to be realised that Lord Kylsant was first brought before the Court when the Crown began by saying what was then thought to be no doubt the truth. No one was cross-examined at that time. It was said that Lord Kylsant had published four lines relating to the trading profit of the company or what the company had made in the course of a year, and when Sir William McLintock was cross-examined he said that it did not show that the company had made a certain profit. Counsel submitted that the four lines to which he referred made no statement whatever with regard to the trading operations of the company. The jury had the document before them, and they would be able to see what he meant by his remarks, and they had also heard the evidence of all the witnesses who had been cross-examined with regard to it. Those four lines, submitted Counsel, were now understood by everybody, and did not make the smallest representation of any sort as to the trading results of the company for the year, but on the contrary. The profit and loss account was not a trading account at all. A trading account, which may or may not be separately kept, was a record of what had been the earnings of a company in the year, and they set against it the expenses, and they got a balance which was the item which in due course went into the profit and loss account. If the jury would look at the documents

exhibits 93 and 94, they would see that Counsel had put into those a profit on trading. In 1926, the figure of £432,193 was a composite figure, some of the figures having nothing whatever to do with the sailings of ships. The figure of profit in the one year was disclosed, and in the following year they would see that the figure was £118,750. It was admitted in the proceedings that the figures which had been given did not mean that the company had made a profit, or a certain profit, for the year. It was, however, turned into a profit by other items being added.

Sir John Simon then dealt with the adjustment of taxation, and said that at some earlier time there may have been some doubt as to how much should be reserved for certain purposes, but in the meantime if something was earned it clarified the position, and there could be something, either big or small, which could be transferred to profit and loss account. The way in which accounts were kept was that if they decided that they were not going to distribute 13 or 15 per cent., but only 6 per cent., they could carry a sum to a published reserve and the public would know of it there. There was one way of securing a hidden reserve, and that was with buildings. Counsel added that it was said that the Bank of England, he did not know whether it was true or not, had its building standing in the books at only £1. If they were to observe the balance sheet which was produced, the jury would see that the position was perfectly plain. If they were to go on publishing documents and stating exactly how much a company had got in reserve and exactly how much money had been transferred, what would the consequences be on the share market? The one thing that they would be seeking to avoid would be that disclosure, and instead to keep up a steady rate of dividend. It was essential that the management of businesses should use what Counsel would call an economy of statement. It was perfectly legitimate, when they were engaged in making a balance sheet for the year which was going to give trading returns, for the profits to be prudently stated, and to move them into a profit and loss account and to move them without stating how much they were moving.

The shareholder, said Sir John Simon, was perfectly entitled to ask at the meeting of the company for an enlargement of the figure, or for any other particulars that he might desire with regard to the profits or transfers, or practically any information he wanted. Being a shareholder, he had that right. Counsel had never been a director of a company, nor had he been the chairman of one. He would imagine, however, that a chairman in such circumstances, and a chairman who had helped his shareholders year after year, would say, "Of course, you shall have such information as you really desire, but may I tell you that the directors are strongly of opinion that it is in the interests of the company that you should put this amount of confidence in us without telling you how these reserves now stand."

Counsel said that unless that view was taken, or adopted when necessary, there would be speculations on the Stock Exchange which might "take the roof off."

Counsel submitted that without a single word of evidence that part of the case was completely exploded. Now it was said that the statement must be relevant to the year, and that statement was a representation that whatever had been brought in was relevant to the year. It might be that the profits had been earned in the year, but it might mean, and it had been said that it was prudent, that it became distributable in that year and not before. If the first of those things was right, it was already disposed of. It had been said that it could be nothing but the proceeds of the trading of the year. Had it not been agreed, however, that it was not the trading of the year? The cross-examination of witnesses had, submitted Counsel, conclusively proved that. It was brought into the particular year to be regarded as available for distribution, and it was not from some old source where it had been kept ready to be drawn upon at any moment, or waiting for a rainy day. Counsel was at a loss to understand why they should not be able to draw on profits that had been made in an earlier year. He did not understand how any business could go on if it was not legitimate to put aside profits earned in an earlier time and kept for a later time. It was perpectly legitimate to distribute profits which they had made and which were free. The jury knew it had been said on several occasions that at the time they were distributed they were free. What they could not do was to distribute profits before they had been made. Counsel had been engaged in proving that every one of those figures was relevant to the year.

Sir John Simon then asked the jury to be patient with him again, because he wished them to look at some more documents that he intended to quote from. They would be able to follow the figures more easily if they did so. "Let us make a bonfire of them when this case is over," said Sir John, "everyone must be sick of them; if anyone likes them, perhaps he will be able to keep them as a memento, or as a great case in which you decided income tax credits."

Counsel said that in the summer of 1926, when the company was engaged in distributing the dividends for that year, it was entitled to deduct a very considerable sum, and it was there and then credited in the books. In that year there was a payment from the Crown back to the company under the section of the Income Tax Act which gave them a sort of consolation prize when the company was not doing so well. Then came along the most complicated excess profits duty business which was one of the so-called mysteries of the law. It had to be remembered, however, that what was lost on the swings was made up on the roundabouts, and such was the provision of the law. Sir William McLintock did not know the whole of the particulars when he wrote his report, and when Counsel called his attention to the fact Sir William admitted it. Sir William was questioned with regard to figures arising out of the year 1926, and admitted that a sum became free in the course of that year. Counsel said he had been guilty of going over the same ground more than once, but it became necessary, and he would remind the jury of the evidence of Mr. Matthews in the witness box, when Counsel questioned him regarding the figures or the sums which became available in 1926 and 1927. Mr. Matthews had said that when those amounts did become available they were promptly transferred to profit and loss account. The jury would remember that Counsel asked Mr. Matthews, "They did not come out of old reserves at all," and Mr. Matthews had replied, "They did not."

It had been said by the Crown that the balance of £439,000 odd was only brought about by wholesale transfers from hidden reserves, which had got nothing whatever to do with the year in question at all. It was said that Lord Kylsant criminally brought into the accounts amounts by wholesale transfers from years before and which existed long ago.

It now appeared, said Counsel, that they first reached the ledger in the very year in which they went out, and to a large extent they were actually paid in cash by a warrant on the Treasury to the Royal Mail Steam Packet Company in 1926.

That was not the whole case, said Counsel, but he claimed to have established before the jury conclusively that very point. There was not a syllable of truth in regard to the allegations regarding the income tax, and every witness whom he had cross-examined on the point had agreed with his view.

Counsel then said he wanted to pass to the excess profits duty accounts. "In this wicked world," said Counsel, "in which we live let us be careful that there is not going to be any more of it, but for years after it was imposed it was one of the most complicated controversies which ever came before accountants or lawyers."

Continuing, after an interval, his address to the jury, Sir John Simon summarised—and he hoped it would be for the last time—the part of the case, and one which he characterised as the most important part, depending on E.P.D. The point, he said, was one of enormous importance, because very large sums were involved,

because of the way in which it was at one time regarded, and indeed presented, and because if the view which he had tried to bring out, and which had been confirmed by witnesses, was understood and applied by the jury, it would at a blow explain away an enormous amount of the misunderstanding, as he believed it was, which seemed to have prevailed at one time in regard to this matter.

Explaining the situation more fully, he said that E.P.D. was imposed early in the war, in order that businesses that were making more than a certain standard pre-war profit, could contribute, and contribute very handsomely, to the expenses of the country. Indeed, the duty had risen at one time to such a height that if in any year the profit of a company was bigger than the datum, then eighty per cent. of it, or four-fifths, was taken for the general revenues of the country. It had extended over a period of seven years, having ended in 1921, and when it had come to an end there had been an immense amount of discussion, negotiation and controversy between the great businesses and the Revenue Authorities, in order to determine what the right charge was. That had gone on for years. In this case, as had been stated by Mr. Matthews, an accountant of the R.M.S.P. and Mr. Stewart (Chartered Accountant), the matter was not finally settled until 1927; indeed, Mr. Stewart had said that it was not really settled until 1930. The matter was a very difficult one to deal with, and one could not take a shot in the dark, because an immense amount depended upon the proper allocation of the figures for the particular years. For one year the charge would be 40 per cent. and for another year it would be 80 per cent. The jury must by now be quite satisfied that in truth and in fact the amounts of £350,000 and £230,000 odd, which were taken into the profit and loss accounts in the years 1926 and 1927, respectively, were taken in in their proper years. They were profits, of course; they had been frozen profits until those years when they had become melted. Reading from the evidence of Mr. Matthews, Counsel said he had asked, "Was there any doubt that the item of £230,000 odd for 1927 was an item that was properly transferred in that year?" Mr. Matthews had replied that there was no doubt at all, and that it would not have been transferred before. Could anything be plainer than that, continued Sir John, and in that connection he asked the jury to bear in mind what he had quoted as being the submission of the Crown when these criminal proceedings were started—that these figures were brought about by wholesale transfer from hidden reserves, which had nothing whatever to do with that year at all, and which had come from a couple of years before. The gentleman who had given that information at the start had not quite followed the situation.

The transfer of the figure of £550,000 to profit and loss account in 1926 was explained in exactly the same way. The jury should not look at the thing as it appeared years afterwards, and with all the added knowledge of what had happened since, and then try and imagine what might have been done; they should look at it as it was looked at in the year 1926. From the balance proof it appeared that on the last day of 1925 there was a figure of £390,277 in the excess profits ledger. The first question was whether that amount was free before that date, or whether, down to the beginning of 1926, it was of the character he had referred to as "frozen." The answer was that according to the view of the company at the time there was a bigger prospective liability than they had provided for, and therefore, at the beginning of 1926, they had held on to the £390,277. Then, as he had stated previously, in the summer of 1926 the Revenue, in a burst of generosity, had repaid £330,000 to the company. That was added to the £390,277 already mentioned. The £330,000 received back from the Government did not belong wholly to the R.M.S.P.; £60,000 of it had to go to the subsidiaries, so that the R.M.S.P. were left with £270,000, plus the £390,277 of their own. They were then in a position to consider whether it was not possible, in the year 1926, and because of what had happened in that year, to transfer a very substantial sum to profit and loss account, and they did transfer £550,000. They had done so with all the more confidence because that was the year that the obsolescence claim and the deferred repairs claim were settled as between the company and the Government. Having transferred the £550,000 to profit and loss account, they were left with a balance of £110,000. The reason why they were justified in reducing the balance, which at the beginning of the year was nearly £400,000, to £110,000 was that the situation was becoming clarified, as Mr. Matthews had said, which meant that the Government had at last agreed as to how much was to be returned under the headings of obsolescence account and deferred repairs account. It was true that there was still outstanding the actual settlement about what was to be done concerning E.P.D., but it was not likely to be a very serious matter, and therefore the company was justified in reducing the balance. Had anything ever been made so absolutely plain?

The Act of Parliament which dealt with these adjustments stated that when money was repaid by the Government to the taxpayer on E.P.D. account, the amounts received should be treated for taxation purposes as the income of the year in which they were repaid.

And now, he continued, came a very serious additional fact. It was no part of his duty to utter a single word of rebuke or reproach against anybody, and he would not do so, but he pointed out that Sir William McLintock had not known the facts. Sir William was one of the great figures in the world of accountancy, carrying immense responsibilities on his shoulders, and had been brought into this inquiry, not in connection with this criminal prosecution, but for the purpose of reporting to the Government as to the prospect of the future trading operations of the Royal Mail and its group. In the course of cross-examination, Sir William had said, with regard to the income tax figures, that these did arise in the years 1926 and 1927. Sir John added that he was dead certain that as soon as Mr. Matthews and Mr. Stewart had gone into the witness box he would prove to the jury that what he had said was true. He had also asked Sir William McLintock if it were his evidence that, as regards any transfer from E.P.D. account in 1926 or 1927, the company at the time they had made the transfer were consciously drawing upon what was ascertained to be old, free reserves. Sir William had hesitated for a moment—because the question was a very detailed one—and had then said "Yes."

The fact was, continued Sir John, that Sir William McLintock was dead wrong, demonstrated to be dead wrong by the evidence that had been called in this case. Whether or not Sir William had been at that time conscious that his information on this head was open to challenge, Sir John did not presume to inquire, but when he had asked Sir William where he had obtained his information, Sir William had given an answer which he (Sir John) had had occasion to test. A number of questions were asked, one of which was that it would be all wrong to imagine that in 1923 the figures were finally settled. In reply to that, Sir William had stated that he had obtained his information from a letter written by Messrs. Blease & Sons, of Liverpool, dated December 28th, 1923. That letter, said Sir John, was produced, but, he asked, "What do you think it says?" It did not state that all these figures were settled. It had stated that the writers had prepared "an estimate" of the liability for the year 1920, and that, taking the figures so far as they were agreed with the Inspector of Taxes, together with the claim for deferred repairs, and making ample provision for further adjustments, they considered the liability would not exceed £130,000.

But it did not stop there. Even in his evidence in chief Sir William had used the most curious expression, and had answered a question in a way which was most unusual in a Criminal Court. He had been asked on behalf of the Crown whether there was a substantial amount of these reserves free from any period to the end of 1926.

He had replied that it was known that there was a very large sum free about the end of 1923. Sir John said he had ventured to interpose because the expression "it was known" was a form of answer to which he was not accustomed. Then Sir William had been asked what was the source of his information, and he had stated that it was obtained from the assistant accountant of the Royal Mail Company, who had dealt with taxation matters, and that he had also been shown a letter. Subsequently, however, Sir John had put questions on this matter to the witnesses concerned, and had shown that the matter was not settled until 1926 and 1927. Mr. Matthews had said that every year they had transferred from E.P.D. account into profit and loss account all that they could, as and when they had received it. Sir John had asked them if they had told anybody that all this was agreed in 1923, and their answers had been that it was not. He had asked Mr. Stewart whether it would have been possible to have regarded E.P.D. liability as determined and fixed in the year 1923, and Mr. Stewart had replied that it would have been absolutely impossible.

The whole of this, continued Sir John, was a complete mare's nest so far as E.P.D. was concerned. There would have been no harm in it even if it were true that in 1926 and 1927 the company had distributed profits which it had been reserving against bad times, and, within a limited degree, it would appear to him to be rather a praiseworthy course to adopt. But in truth and in fact neither the income tax transfer, nor the E.P.D. transfer, nor the corporations profits tax transfer, nor any other blessed item were antiques; they were not even middle-aged, but were in fact amounts which had just become available at that time, and were used just as they came in.

Then in the course of the re-examination of Mr. Matthews a very instructive question and answer had been given, especially when one considered the issue of intent—because, after all, if the Court were investigating a crime, the intent of the criminal was not unimportant. It was put forward, said Sir John, somewhat dramatically, that this was a deliberate, cold-blooded, ingenious scheme, by which illegitimate figures were put into the accounts of a particular year, though drawn from long ago. If Lord Kylsant had marched into the office and had said that he was the authority to decide how much should be transferred, and had told Mr. Matthews that he must transfer a certain sum, that would have been one thing. It happened, however, that Mr. Pritt had asked who decided upon the precise figures to be transferred, concerning the amount to be taken out of E.P.D. account. Mr. Matthews had answered that it was he who suggested how much, and that very often his suggestion would be adopted. Mr. Matthews, said Sir John, had been engaged throughout the period in question on the task of ascertaining how fast it was possible to "unfreeze" these sums, and make them available for transfer to the profit and loss account.

The last of the four heads of impeachment, said Counsel, was the most amazing of all. He drew attention to the profit and loss account for the year 1926, and pointed to a reference on it to the adjustment of taxation reserve. It was manifest, he said, that in the total balance for the year there was included something from reserves. There was also mentioned thereon an amount transferred from reserve fund, and it was manifest that there were two transfers from reserves. Yet when the case was presented on behalf of the Crown, the fourth allegation made was that the account was not a clear representation to the shareholders, and represented that the transfers from any reserve fund amounted to only £150,000. If anybody could say that seriously to-day, he could say anything. There was a published reserve fund, but it was perfectly clear that this company was one which, like so many others, had internal or "secret" reserves—and he was not afraid of the word "secret"—put away. He claimed to have completely exposed and refuted the four allegations.

While, of course, in a complicated matter of this sort, investigation was perfectly right, it was trying for a man to sit day after day in the dock, awaiting the jury's ultimate verdict. But with great confidence he would ask the jury to say that they were satisfied that there was no material whatever that could possibly justify the conclusion that there had been perpetrated a deliberately false affirmative statement or representation of any kind whatever.

Sir John also emphasised the fact that even the new Companies Act, which contained provisions calling for more information, did not provide that companies must disclose secret or internal reserves. There was a very good reason for that. Those who were acquainted with business would understand perfectly that it would be a very bad day for British commerce, finance and industry if we did not place a proper degree of confidence in those who were managing great businesses to abstain from distributing to the full the profits which could be made when things were prosperous, in order that they might be able to assist and alleviate the position for those to whom they were responsible at times when business was depressed. It was so easy, in 1931, to look back on a previous year and to say, "If I had been chairman of the R.M.S.P. I should have said more then." There were many politicians who claimed that if they had been Prime Minister in 1927 the world would have been different to-day. But in order to consider this matter one must throw one's mind back to the actual conditions in 1927. There was reasonable ground for believing that at that time the tide of business began to turn. In the report for the year 1926, it was stated that there was a distinct improvement in outward cargoes for the first four months. That had meant that British exports were increasing. Then had come the general strike, and nobody knew for how long that particular infliction would have a reaction on British trade. But there were indications that the year 1927 was better than the year 1926. One might say that Lord Kylsant had no right to believe, as he did believe then, that things were beginning to mend. That was a perfectly reasonable view to take then, however, no matter what the wiseacres might say in 1930 and 1931. If that view had proved to be true, Lord Kylsant would not now be in the dock, but would have been congratulated by enthusiastic shareholders upon the firm manner in which he had controlled the business throughout a difficult period.

Coming to the prospectus issued in 1928, Sir John said that he found it quite impossible to take the view that the case against Lord Kylsant, with reference to the prospectus, placed a new and more difficult burden upon the defence. Sir John drew attention to the paragraph in the prospectus which stated:—

> "Although this company, in common with other shipping companies, has suffered from the depression in the shipping industry, the audited accounts of the company show that during the past ten years the average annual balance available (including profits of the Insurance Fund), after providing for depreciation and interest on existing debenture stocks, has been sufficient to pay the interest on the present issue more than five times over."

Sir John reminded the jury that the sum required to pay the interest on that present issue was £100,000, so that the statement in the prospectus was equivalent to saying that the average annual balance available had been more than £500,000. The first thing to be considered was whether that was true.

The second paragraph quoted was as follows:—

> "After providing for all taxation, depreciation of the fleet, &c., adding to the reserves and payment of dividends on the preference stocks, the dividends on the ordinary stock during the last seven years have been as follows. . . ."

The dividends paid in the years from 1911 to 1927 were then set out, and Sir John emphasised that if it had not been for the policy of equalising dividends as far as possible the figures for the first few years in that period would have been far bigger than they were. The issues were whether or not it was true that during the last ten years the average annual balance available, including profits of the insurance fund, and after providing for

depreciation and interest on debentures, had been more than £500,000 a year; and whether it was true that between 1911 and 1927 it had been possible to pay the dividends mentioned, after providing for taxation, depreciation and adding to the reserve. There was also the question that if indeed anybody could say that either was false, was it false to the knowledge of those who had put it forward, and was it stated for the purpose of deceit?

Sir John Simon, dealing with the question of the average annual balance available during ten years, after providing for depreciation on fleet, paying interest, and so forth, suggested that the figures given were true. During the course of the case he had had the average worked out very carefully in the scientific way. Mr. Pritt had admitted that if the figures were dealt with in what he said was the right way, practically the same result was achieved. The whole point about the prospectus, when it spoke of average, was this. It was saying deliberately to the person who read it, "Mind you, I am not giving you year by year a series of fluctuating figures, but if I look through ten years it is true to say that, after I have provided for depreciation and interest on debentures and have got rid of my prior charges, there has been sufficient to meet the interest on what we seek to borrow five times over and more."

"And that," declared Sir John Simon emphatically, "is true."

Counsel said he would begin to think that business and financial life was becoming too complicated for human nature if one was not entitled to say that so much was one's average over ten years. No one, in fact, supposed that a shipping company made the same average profit over every year. He hoped the jury had noticed that, when he was dealing with Sir William McLintock, he had put a number of questions with regard to the matter of the provision for depreciation. He would have been glad if Sir William had seen fit to point out that from an early stage this company was being conducted on such conservative lines that it was charging a rate of depreciation that in many quarters was held to be excessive, and that in times of great prosperity this company had taken one and a half million pounds and had put it aside as an addition to writing off ships.

Another practical illustration of the policy to which he referred was this. The accounts here and there contained records of the sale of the ships, and no one had pointed out any instance where a ship had been sold for less than its book value. That meant that, if anything, in this company, depreciation was being overdone. Sir William, when being cross-examined as to the rate of depreciation, had said he had taken the usual 5 per cent. The Judge had suggested that he should be asked if there was a usual figure. The question was accordingly put to Sir William, and he had replied to the effect that the only usual figure he knew was the Inland Revenue figure of 4 per cent. Counsel asked the jury specially to remember that when the prospectus spoke of providing for depreciation it meant doing so on a big scale.

Sir John submitted that the paragraph in the prospectus to which he referred did not have attaching to it, from beginning to end, any shadow of a taint of criminality. There was introduced at the beginning, he said, the warning, "although this company in common with other shipping companies has suffered from the depression in the shipping industry." Had they any evidence that other shipping concerns in this country were booming? not at all. In the prospectus it was being clearly stated to the intended investor, "Now don't imagine that this company has not suffered from depression and don't imagine that our profits are what they would be in times of boom." The prospectus, in fact, said in so many words, "I want to begin by telling you that, like other people, we are suffering from the depression."

Lord Kylsant and his Court of Directors, in times when they enjoyed prosperity, did not distribute all they might have distributed, and therefore they were able to distribute more than they might otherwise have done in times of depression.

Dealing with the question of adding to the reserves, Sir John said that when the case was opened it almost appeared as though the prosecution thought there had not been an addition to the reserves.

The Attorney-General murmured something which was not audible in the body of the Court.

Sir John Simon said he was obliged for Sir William Jowitt's remark. Sir William had declared that he never said that, but had spoken to the contrary. It was then admitted, as a fact, that the reserves were increased. If the jury would turn to the front page of the prospectus, they would see two lines which read: Reserve Fund, £1,450,000; Insurance Fund, £1,311,755.

They would recognise, of course, that on the face of the document there was a reserve of nearly £3,000,000. The Attorney-General had conceded that it was absolutely true that those reserves had grown.

Sir William Jowitt (interposing): What I meant to say by my interruption was this: I concede that as between 1911 and 1927 the 1927 reserve was larger than the 1911 reserve. I didn't mean anything further than that, and I don't intend to mislead you.

Sir John Simon said that, taking the statement with regard to reserves as it stood, he found it hard to visualise anybody not taking the statement as meaning that the reserves at the end of 1927 were greater than at the end of 1911. If he had any doubt, he had only to refer to the other words, "during the last seventeen years."

Throughout that seventeen years the company said they had not only provided very strongly for depreciation of fleet, but they had added to their reserves, and that statement was absolutely true.

If the jury looked at document 105 and directed their attention to columns 3 and 4, they got the whole story of the addition to the reserves—not a discreditable story, he should have thought, in regard to a great business concern. It showed that even in very difficult times when many people who were less prudent would undoubtedly have held their hands, this concern was continuing to pay into its insurance fund, with the result that the figures were absolutely as stated, and there was an addition.

But apparently the prosecution were saying, "Ah, yes, but there are two kinds of reserves." That in Counsel's view was a very funny thing. It was quite true that the peak of the internal reserves had been passed before 1927. The dividends in those years of difficulty had been maintained, not by excessive drawing on the published reserves, but by drawing upon other and internal resources. And what on earth was it supposed should have been stated in the prospectus about it? He had great difficulty in understanding. Was it suggested that it was proper to have unpublished reserves, but if you issued a prospectus you must tell people about them.

"My submission to you," said Sir John Simon, "is this, I make it with great seriousness, and I invite you to consider it from this time on. I submit that the fair examination of the evidence already given in this case should satisfy any reasonable body of men and women that as matters stand the Crown has completely failed to establish this criminal charge."

What the Crown had done in that Court and in that case was a thing which he trusted the Crown in England would always do, for it was a great tradition, the tradition of the prosecutor in this country. In some countries, as the jury might probably be aware, the barrister for the prosecution went all out to obtain a victory.

There was no victory in a case of this sort in this country. It was simply a matter of getting justice done. The one object of those prosecutions for the Crown in that Court was to bring out the facts, and it was only just to Sir William Jowitt to say that when he began to appreciate that there might be some misunderstanding on the matter of excess profits duty, it was he who made it plain and made sure that the jury had all the possible materials before them.

Sir John said it was his duty to bring before the Court the result as he conceived it to be of the figures which had been dealt with. He was going to call Lord Kylsant, but he was not going to burden the Court with many other witnesses. If the case proceeded to its bitter end, it

would, he thought, be more proper that Counsel for Mr. Morland should put before them the evidence of a distinguished body of accountants.

"I submit," said Sir John in concluding his speech, "that it is quite clear that no body weighing this grave issue as to whether there has been falsity in the profit and loss account of that prospectus could say, 'I am satisfied that there has.' Still less would he say that these statements have been made deliberately and falsely and with intent to deceive."

LORD KYLSANT IN THE BOX.

Lord Kylsant then entered the witness box.

Opening his examination, Sir John Simon asked, "You are a Grand Cross of the Order of St. Michael and St. George, are you not; will you tell us the year in which you were made a peer?"

Lord Kylsant: In 1923.

I think you were born in the year 1863?—Yes.

And did you begin your experience of the shipping business of Britain in Newcastle-on-Tyne, in the year 1886?—No, it was in 1880.

I think that in 1886 you accepted a position in Glasgow?—Yes.

And in 1888 did you form a small company—I think it was the King Line, Ltd.—and acquire your first steamer?—Yes.

Lord Kylsant said the King Line was still in existence and he was still its chairman. He came to London in 1902 for business purposes.

Sir John: What was the year in which you were first elected a director in the Court of Directors of the Royal Mail Steam Packet Company?—It was over 25 years ago.

I have the record here. It was 1902, was it not?—Yes.

And afterwards you came to be chairman of the Royal Mail Steam Packet Company?—Yes.

And have continued to be chairman until the voting trustees——?—I am still chairman, but I have been given leave of absence by the voting trustees.

I won't delay the Court and I won't embarrass you by going over any long list of your public life and services. The Attorney-General, of course, did all that was handsome and proper about that. You have had a great many responsibilities and interests of a public kind. Before you became a member of the House of Lords you were a member of the House of Commons. Some of us remember you as a colleague. You were a member for Pembroke Boroughs, afterwards a member for the City of Chester, and for the Chester Division. You are now Lord Lieutenant of the County of Haverfordwest, Vice-Admiral of North Wales, and of the County of Carmarthen?

Lord Kylsant agreed that the suggestions of Counsel were correct. It was true that he had been appointed President of the Chamber of Shipping of the United Kingdom, President of the Chamber of Commerce of the British Empire, and that he had served on a number of public enterprises of all sorts.

Sir John: I think you are taking a very large responsibility in connection with the Order of St. John of Jerusalem and—one of my colleagues here would, I am sure, like me to mention it—you have been chairman of the representative body of the Church in Wales?

Lord Kylsant: Yes.

During the war did the Royal Mail Steam Packet Company, with its associated companies, place the whole of its resources and great fleet at the disposal of the nation, and, of course, their vessels were very hard worked?—Yes.

The company lost in hostile action something over 100 vessels?—Yes.

And had those vessels to be replaced when costs of construction were abnormally high?—Yes. I should say that the Royal Mail Steam Packet group lost altogether some 104 vessels.

And it goes without saying that a great company like yours made great responses on the subject of war loans and the like?—Yes.

When the war was at its height, and this arrangement was made about obsolescence allowance, were you one of the representatives of the shipping world who negotiated it.—I was present.

Along with Lord Inchcape and others?—Yes.

Was it a very important matter for a shipping company like yours to get a proper allowance from the Government for the building of ships and the postponement of their repairs to a later date?—Yes.

Another material thing. When the war was over in 1919—one of the results of the Treaty of Versailles, I think it was, that a very considerable number of merchant vessels became British—whether to the ultimate advantage of British industry or not is a question, but it was done—and the Government did not want ships, it wanted money. Did the Government of that day appeal to the great shipping firms and the leaders of business to take those ships off their hands?—They first appealed through Lord Pirrie to Lord Inchcape and myself to know if we would take the responsibility, and we agreed to do so on condition that there should be no commission or profit of any sort. This was with regard to British ships, not foreign. Lord Inchcape sold all the others as agent of the Government.

I think that it often happens in cases of patriotic action of this kind the Royal Mail Steam Packet Company got left with a good many ships themselves?—Yes.

Amongst the lines which the Royal Mail Steam Packet Company has developed and still maintains, is there a very important line running between Southampton and South America?—Yes.

Especially in recent years has South American trade been exposed to severe competition?—Yes, I think there has been more competition in the South American trade than in any other trade in the world, because the Argentine is one of the countries that did not come into the war.

I do not think it is necessary to mention British rivals, but in point of fact, are there some British lines that are in keen competition?—In passenger service we have had very keen competition from the Vestey Group, who built very high-class vessels.

Lord Kylsant agreed that the Trade Vessels Committee assisted by guaranteeing the building of some vessels which were used for trading to South America. The same body also obliged by assisting competition and giving guarantors for the competitors.

Sir John Simon: So that the British taxpayer has been engaged in financing competition?—Yes.

Now, I just want a word about the United States. Take the case of the Pacific Steam Navigation Company, your 100 per cent. company—it carried on, did it not, regular services to New York and Valparaiso, and did the United States Government give a great subsidy in connection with this particular trade?—They gave about £10,000 a voyage to the American ships that ran against us.

Then again, with regard to the United States, is not this right? The United States Government had a fleet built since the Armistice, and they also operated in various fields?—Yes, they built four large vessels, costing about £5,000,000 sterling, which were faster than the boats of Lamport & Holt—one of the Royal Mail Steam Packet Group—and when they had lost a lot of money trading with them, they sold them to the managers for under a million sterling and gave them an enormous subsidy for running.

Now, I just want to ask you this. In those circumstances, with keen competition against a British Line, is it in your view, in the interests of the company and those who are shareholders in it, to announce in detail the state of your own trading affairs year by year?—No.

Assuming that you were over some years doing badly in trade, it would, I imagine, manifestly stimulate competition, and in any case it would give competitors a great deal of information?—Yes.

And has that view of the matter in your time been recognised by the Board and, as far as you know, by the shareholders?—I think everyone who has much to do with shipping recognised that.

On receiving this answer, Sir John Simon said: "Forgive me if I ask obvious questions; one sometimes has to do so in the course of law."

Continuing his questions, Sir John inquired of Lord Kylsant if he would regard it as injurious to the interests of the shareholders if elaborate details were exposed.

Lord Kylsant replied in the affirmative.

Are you, yourself, a believer in what is sometimes described as the shipping trade cycle?—Yes.

And without professing to explain exactly the economic cause, do you believe it to be confirmed by the experience of British shipping?—Yes, in my 50 years' experience, it has varied between seven and ten years before you got to the peak.

Sir John Simon put to the witness a number of examples of what he referred to as the shipping trade cycle. He noticed, he said, that in 1880 the crest of a wave was attained. In the next six years things appeared to be going down. In 1887 and 1888 they were rising again, and in 1889 the crest of another wave was touched. That was a cycle of nine years. Then, again, there was a gradual decline until 1896. In 1897, things were rising again, in 1898 they rose further, and in 1899 they got to the crest of yet another wave. That was a cycle of about the same length. The year 1900 showed a slight decline, and in the years 1900, 1901, 1902, 1903 and 1904 they were going down. In 1905 they were rising once more and in 1906 came the crest of a wave. That time the length of the cycle was only six or seven years. Another cycle of about six years followed, which brought them again to the crest of a wave in 1913. After that they came to an event which certainly was outside the ordinary operation of economics—the Great War.

Lord Kylsant agreed with Counsel's statement.

Sir John Simon suggested that in the year 1914 the Royal Mail Steam Packet Company paid no dividend at all.

"No," said Lord Kylsant, "the Royal Mail did very badly."

With regard to 1915, 1916, 1917 and 1918, I can leave everybody on the jury to remember those years for themselves. After that you come to 1919, when you get great activity and the crest of a wave in 1920?—Yes, it was in the spring of 1920.

I think March 19th, 1920, was the date of the Budget statement of that year, and there is no doubt at all there was a sudden increase of taxation and a very sharp decline?—Yes.

Lord Kylsant agreed that the years 1921 to 1925 showed results which could only be considered as below the crest of the wave, some of them seriously below.

Continuing his evidence, Lord Kylsant said that the company's accounts came before the Court of Directors at each meeting and were examined with the corresponding figures of the previous years.

Sir John Simon: So that not merely you, but every other member of the Court of Directors had them before him?—Yes, and they were attached to the minute book so that each member could read them.

Is the statement in your report true that in the first four months of the year 1926 there was a considerable increase in your group of companies in your export trade?—Yes.

Applying to that situation your past experience and belief in the cycle of the shipping trade, did you form the view as to whether in the next year things would improve?—I hoped that when that year was over the following year would begin on the upgrade.

The general strike had a seriously depressing effect at the time?—Yes, very, and no one could say how long it would last.

Now we come to the year 1927. In 1926, notwithstanding the general strike and other circumstances, there was an increase in the earnings of the fleet, and the deficit was smaller, so that when we come to 1927 there was a substantial further improvement, or shall we put it a further recovery of the black figure. I wish to ask you this. I want to go back to the situation in 1927. Of course, we know what happened in 1928, but nobody could have foreseen that. In 1927, is it your view that things were improving or growing worse?—Improving.

Did you regard that as confirmed by considerations of the shipping cycle?—Yes.

Was that view very widely held in business circles?—That was my view; I believe so.

It is obvious that we can all be very wise after the event. I am only speaking of the view of 1926 and 1927. Now I want to ask you as to the practice which under your guidance and advice the Court of Directors followed in the matter of seeking to equalise dividends. We see, of course, on the figures that in fact that has been the course which has been pursued. In your view is that a prudent, businesslike course?—Yes.

It involved, for instance, going back to the beginning of the period mentioned in the prospectus. The distribution of dividends was 6 or 7 per cent., whereas it would have been possible to have distributed 13 or 17, or whatever it might be?—Yes.

Is it in your experience a recognised practice—this method of endeavouring to equalise dividends in well-managed shipping concerns?—Yes.

I suppose, in fact, the position fluctuates a good deal?—Yes.

There are a hundred things to consider, currency and exchange, and so on?—Yes.

Had that policy the approval of your Court of Directors?—Entirely.

That involves, as we realise, the setting aside of some reserves?—Yes.

We have got the figures all worked out here. Is it a fact that the reserve fund—the published reserve funds of the R.M.S.P.—was increased and added to as between 1911 and 1927?—Yes.

Continuously?—Practically continuously.

So far I am speaking of the published reserves. Is the existence of large published reserves, such as we see in your balance sheet, an important consideration as security for those who are invited to lend money to the company?—Yes.

You say on one page of the prospectus, after the statement of the capital reserve fund, that there is a reserve of £1,450,000. Do I understand rightly that the insurance fund being in fact in excess over the claims upon it is really also a reserve?—Almost entirely a reserve. Almost the whole of it. My practice has always been to debit more for insurance than it actually costs.

Having stated the reserve fund on the front page you get a statement on the second page "Adding to the reserve and payment of dividends." Is it true that the reserves have been increased as between those years?—Yes.

I understand that apart from that and quite outside the published reserve, to which attention is called here, there were in addition some internal reserves?—Yes.

I will not trouble you as to how far they arise in the year, or how far they have been retained, but I will just ask you this—did you see any objection at all to the reservation of an internal or secret reserve?—No.

Is it in your experience a part of the ordinary management of great businesses of this sort?—Yes.

If there is going to be an internal reserve, is it, in your view, in the interests of the shareholders that you should publicly announce how much it is?—No.

Now tell me why not?—I have always felt that we should put by a certain amount of internal reserve to meet unexpected losses, and that it is to the advantage of business as a whole that there should certainly be internal reserves.

The question I put to you is slightly different from that. I was assuming that you took the view that it was an advantage to have internal reserves. What I wanted to know was whether, if you had internal reserves, it was, in you view, desirable or undesirable that the shareholders should be told from moment to moment what the amount was?—My view is that it is to the advantage of the company not to publish them.

I suppose the reason they are internal or secret is that they were not published? Your shareholders have shown every confidence in the Board, but is it the experience

of directors generally that if it were shown there were great sums available the question then does arise, "Then why should not more be distributed?"—Yes.

And does it not follow that the existence of a reserve is a resource against a rainy day which, in the interests of the company, you do not think it advisable to announce?—Yes.

If there is further or published reserve, that is additional?—Yes.

Now, when one looks at the figures—we have all been over them and the jury have got them by heart—we see that the way in which in the later years these dividends were maintained was owing to the circumstance that there were internal reserves to which recourse could be had.

I notice as a matter of fact you did not seriously deplete the published reserves at all?—Except that one year—the general strike year.

Sir John Simon next took Lord Kylsant to the prospectus, and quoting the statement it contained with regard to the R.M.S.P. Company's satisfactory position in spite of the general trade depression, asked, "You are responsible for making that statement, and you understood the matter; is it true?"—I am not the only one responsible, but I have my colleagues.

Let me take you, Lord Kylsant. I don't suppose you are shirking it?—Not in the least.

I must ask you the question. Is it true?—Yes.

And in the same way about adding to the reserves, is that true?—Yes.

I go a step farther, and I am putting my question carefully to cover the words of the section. Let us suppose for a moment, Lord Kylsant, that somebody could pick holes in the statement. I am not saying they could, but just suppose they could. Did you ever know that it was untrue?—No.

I am making still the same hypothesis, that is, supposing that someone could pick holes in it. So far as you are concerned, had you ever the smallest intention of putting forward a statement that was not true?—No.

Now I want to ask this. I am bound to put the question. Had you ever any intent to deceive or defraud any member, shareholder, or creditor in the matter at all?—No.

One other phrase I must put to you, and I do it with great solemnity, because your answer is one on which much may depend. Supposing, again, that somebody could pick holes in this prospectus, were you ever a party to making a statement in this prospectus with intent to induce persons to become shareholders by a means of false statements?—No.

I should have said not shareholders, but prospective subscribers to debentures?—The answer is, No.

Is it a fact that your Board, as a rule, got a fairly full attendance of its members?—Nearly always. There were four or five members, and they nearly always attended.

I just want this fact. Did you keep internal reserves a secret from the meeting?—No.

Or was it a fact that they knew?—They knew as much as I did.

Well, we all see what their names were and the jury will judge. You were the managing director and no doubt first in authority. Now will you tell us what happened when the accounts were discussed?—When they came before the Court of Directors the chief accountant came into the room. I took the sheet and went through every item on one side of the balance sheet and then I went to the other side and went through every item and made remarks about them and then did the same about the profit and loss account.

As I follow you the other members of the Board would be studying the voyage accounts from month to month?—Yes.

So a general view is gathered from that?—Yes.

This is not material to the charge, but so far as you know have you ever misled or overborne the Board?—Never.

These voyage accounts, I imagine, from time to time in later years would show deficits as a matter of trading?—Sometimes heavy deficits.

When it was observed that the recent reports of the voyage accounts indicated heavy deficits did the question arise as to how the losses could be met?—That was one of the things that were always discussed.

And such things as E.P.D. and other reserves would be very useful?—Very useful.

One more matter with regard to the profit and loss account. Part of the profits from the actual trading would arise from the actual shipping business, but quite apart from that had the company very large investments?—Yes.

Investments in the 100 per cent. companies?—Yes.

And also in companies in which you did not hold a 100 per cent. interest?—Yes.

I will just mention one or two of the more important. Take, for instance, Elder, Dempster, which is not a bad example, representing £440,000 in your books. Then Coast Lines, Limited. What is Coast Lines? Where do they go?—They go nearly everywhere on the coast.

I will give you another name. The Argentine Steam Navigation Company?—That was a company that was bought during the war. The Government gave us permission and we bought it from an enemy alien, an Austrian. I would like to say we bought it by permission of the Government up to 60 or 70 per cent. We bought it at par at £1 shares, and the shares were quoted on the Stock Exchange at 4s. 6d. We stuck to it, a change came, and when the voting trustees were appointed a year ago, they asked me if I proposed to sell. I said I was sorry, but I couldn't do so, and then we sold at 25s. after their going down to 4s. 6d.

Sir John Simon: That is a very interesting story. You nursed the thing and brought it round.

Lord Kylsant said there were nearly 30 more companies, in some of which the R.M.S.P. had a controlling interest, and in some of which it had not.

And as to the 100 per cent. subsidiaries, are the reserves something like £12,000,000?—Yes.

Now coming to the profit and loss account for December, 1926. As a matter of fact this expression, "adjustment of taxation and reserve," you didn't invent that expression at all?—No. It was Mr. Morland who thought that was the proper phrase to use.

As far as you know was it perfectly proper?—I think so. I am not an accountant.

You are not an accountant, but I asked you so far as you understood at the time, or understand now, is there any statement whatever which is made in the profit and loss account there before you and the jury which is false?—Nothing whatever.

If anybody could pick holes in anything, was it, to your knowledge, false?—No.

In putting forward the profit and loss account, did you ever have—I am bound to ask you the question—any intent to deceive, mislead or defraud?—No.

Do the same answers apply to the corresponding documents of 1927?—Yes.

I am just going to ask you this. As a man of great affairs and with inside knowledge, have you ever speculated in shipping shares?—I have never sold a shipping share in my life. I think in one small family trust company 25 years ago I sold 20,000.

Sir John: You are quite right to make the qualification.

But, speaking generally, what you have stated is the position you took up?—I never speculate on anything.

Right or wrong, Lord Kylsant, have you regarded it as one of your opportunities and duties to try to maintain the prestige of British shipping in the face of the competition of the world?—Yes.

And standing there on your oath and on your trial are you aware that you have ever failed in the discharge of that or of any other duty in connection with the company and its shareholders?—No.

This completed the examination-in-chief of Lord Kylsant.

The trial was then adjourned until Monday, July 27th.

SIXTH DAY'S PROCEEDINGS.

Lord Kylsant again entered the witness box, and Sir John Simon said that there were one or two further questions which he would like to put. He intimated that he desired to ask with regard to the rate of depreciation which was adopted. They knew that it was 5 per cent., and he wanted to know whether in the experience of Lord Kylsant, in connection with the Royal Mail Steamship and Allied Companies, and generally, such a rate of depreciation as 5 per cent. was really necessary, or whether it was excessive.

Lord Kylsant replied: I consider that it is unnecessary and excessive, but it gives the advantage of an internal reserve without talking about it.

Sir John Simon suggested that such a rate of depreciation as 5 per cent., instead of 4 per cent., over a series of years, would give an internal reserve which would eventually become a very large figure. The witness replied: On the Royal Mail Group, many, many millions.

Counsel: In the instances we have observed, when a ship came to be sold for any reason, it appears to have realised more than its book value?

Witness: In nearly all cases.

Is there any exception to that?—There was one just after the War. In 1930 there was one. We had to buy a ship to carry on a certain trade. It was the *Oruba*. We bought her for £175,000. We ran her two or three passages but she was quite unsuitable. In the first four years we wrote off 50 per cent. depreciation, and then sold her to be broken up for a nominal sum, and we charged profits on the year with the difference of about £70,000.

That is obviously an exception?—Yes.

Apart from that, and another exceptional case or two, is it your experience that by the sales of ships they have realised more than their book value?—Yes.

Do you regard that as confirming the view you have expressed that your writing down was excessive?—Yes. I may mention in that connection that we had one vessel running all last year, and it is the eighty-second year since she was built.

The Attorney-General then commenced his cross-examination by asking Lord Kylsant whether he was a director of a very large number of companies. He replied that the number was very few, except the shipping group.

Sir William Jowitt said there were a very large number of companies altogether, and the witness answered that he looked upon the shipping group as practically one, although there were 35 companies. Apart from these companies, he was only a director of four or five concerns.

Your experience in the City of London in connection with companies is considerable?—It is considerable.

You are, or were, a director of one of our great banks?—Yes.

A director of one of our great railway companies?—Yes.

A director of an insurance company?—Yes.

A director of an investment company?—Yes.

And a director of shipping companies?—Yes.

I may put to you some questions and get from you the view of the experienced business man?—To the best of my ability.

Do you agree that the primary function of a balance sheet is to show the true and correct view of the company's affairs?—I should say it certainly was to show the true and correct view of the company's affairs.

When I talk about a balance sheet, I include the profit and loss account, since the one is always connected up with the other?—They should certainly both be true and correct.

That is the primary function, and all rules of accountancy are merely subsidiary towards that end?—I do not know much about accountancy.

With regard to internal or secret reserves, would you tell me from your experience that it is a common thing for internal or secret reserves to be built up?—A certain number of internal reserves are good for all businesses when they can have them.

In this case, I have not in any way questioned the propriety of so doing?—I agree.

Next, you tell me that internal reserves which have been built up may, with propriety, be used to level out the inequalities of one year with another?—That is my view.

That is done?—Yes, it is done.

I hope you will observe that I have not questioned in any way the propriety of so doing. Do you think that to call attention to an exceptional loss, or to call attention to and accentuate an exceptional profit may not be to give a true and accurate account of the company's affairs?—Do you mind repeating that.

If you have a temporary exceptional loss, of a temporary character, if you call attention to that, you might, so far from reproducing a true and accurate view of the company's position, you may give a false impression of the company's position?—Yes, I agree.

However good the principle may be, nearly all principles can be misapplied, can't they? You would agree that the extended and continuous utilisation of large sums drawn from secret reserves, without any indication, at length becomes misleading?—It could, under certain circumstances.

I will adopt a very neutral phrase. It has been said, "There would come a time when the auditor would say, 'Now, if these reserves are to be used again, some indication must be given to the shareholders that the profit and loss account is augmented by transfers from the E.P.D. or other reserves.'" Would you agree that there does come a time when some indication must be given?—There might come a time.

And there might come a time when, if no indication was given, the balance sheet would no longer be a true and accurate account of the company's affairs?—If you carry anything to its extreme you may get a wrong position, I agree.

There might come a time. Supposing that time comes, Lord Kylsant, when indication is necessary. The indication must be sufficient, must it not, to turn something which admittedly without it would be untrue and inaccurate into something which is true and accurate?—I feel that that is a question which an accountant could answer better than myself.

I want your business sense of it, and your great experience. We agree that a time might come. We are not discussing whether it has come in this case, but a time might come when an indication ought to be given to the shareholders of the utilisation of secret reserves?—It might come, I agree.

Assume in a given case such a time has come?—Yes.

On that assumption do you agree that the indication which must be given to the shareholders must be a sufficient indication to turn something which would otherwise be untrue and inaccurate into something which is true and accurate?—It is all a question of assumption. I feel that it is a distinct question of law. I always get the very best opinion which is available. When I am dealing with accounts, I try and get the very best opinion of accountants. I do not set up myself as knowing anything about law, or knowing anything about accountants' work. I want to be quite frank. This great company, or group, has had five great lawsuits in the last ten or twenty years. We have won everyone of them. That was not because I knew anything about law, but I always instructed our solicitors to get the very best opinion there was, and I try to get the same with regard to accounts.

I only wanted to get the business sense of a very experienced business man. Assume, if you will, that a time has come when some indication must be given to the shareholders, it must, in your view as a business man, be sufficient to prevent the balance sheet being false and misleading?—I should generally agree with that.

Come to the actual case of your company. It was in the year 1925 that the words about adjustment of taxation reserve were first used. It is a matter of history?—Yes.

The Judge remarked that it was in respect of the accounts for that year, and the Attorney-General agreed.

The Attorney-General asked: Do you agree with me that the circumstances which existed in that year, having regard to the previous history, were such as to make it necessary that an indication should be given to the

shareholders if you were going to draw further from the secret reserves?—The Court of Directors did make a direct indication to the shareholders by drawing £150,000 from the open reserves, and therefore had drawn, in my opinion, the attention of everyone to the fact that the general strike of 1926 had hit practically the majority of great companies in the City of London.

You are answering the question by inference. Do you agree that by the year 1926 a situation had arisen which necessitated an indication to the shareholders?—No, I do not.

Do you really mean "no"? A moment ago you told me that an indication had been made, and it had been done for that purpose. I am not sure that you follow it, and you should not answer my question without following it plainly. Do you agree that, in respect of the year 1926?—Do you mean by the year, or in respect of it?

I mean in respect of it.—I was answering by the year.

I mean the accounts which are actually signed and published somewhere in May, 1927. Those accounts are in respect of the year 1926. Would you agree that the time had come then when an indication had to be given to the shareholders?—I do not agree that a time had come, but at that time an indication was given to the shareholders of that particular year, not because 100 years before or 50 years before——

We both agree that the accounts in respect of that year had to give an indication to the shareholders?—I agree.

Do you agree that in the absence of an indication to the shareholders, these accounts would have been false and misleading?—They would not have been false and misleading.

The Attorney-General then produced the profit and loss account for the year 1926, and pointed out that there were certain items which were referred to as "special credits." He added: "The E.P.D. reserve was, as it were, part of the vintage of the years 1918 to 1920. It was then the grapes were harvested, picked, pressed and bottled, and stored in the cellar. But the bottles did not become drinkable until the year 1926. For the first time it became possible to drink that £550,000. That metaphor expresses what was the case?"

Lord Kylsant: I think it is rather misleading.

There has been confusion here regarding free reserves and old reserves. They were old reserves. Your case is that they first became free in the year 1926. That, I understand, to be your case?—I do not accept the position.

The Judge: It may be, it does not matter whether they were old, young, or middle-aged reserves. I am only saying this tentatively. It may be it is a question as to what the current items were.

The Attorney-General: I will pass from this point. At any rate, let me call them exceptional items. There were brought into that account exceptional and non-recurring items?—They came in that year.

Sir William Jowitt next alluded to the income tax reserve, which, he said, might be said to have arisen in that year. He added: "Bearing that in mind, will you look at the profit and loss account. You have told me in respect of this year an indication had to be given to the shareholders. You have agreed with me that when an indication has to be given, the indication has to be sufficient to make that true and accurate which, without it, would be untrue and inaccurate. Tell me, what is the indication which was sufficient to make this document true and accurate to the mind of the ordinary shareholder, the man in the street?"—There was nothing brought in in that year that was not rightly appertaining to that year. The only reason why it was necessary, was that when we were going to pay the dividend, and were drawing on the open reserve of £150,000, we had it set out in the profit and loss account.

There are the words "adjustment of taxation reserve." Do you attach any, and if so what, importance to those words?—Those words were not suggested by me. I saw no objection to them. I do not go farther than that. The big item was, in my view, the earnings of the company in that year.

I am asking you, as a very experienced business man, whether you attach any, and if so what, importance to these words, "adjustment of taxation reserves"?—I don't attach much importance to them.

Equally, may I take your view to be this: The ordinary intelligent man in the street, the investor, the shareholder, he also would attach little or no importance to these words?—No, I do not go as far as that. You ask me whether I, as chairman of the company, was satisfied that the published statement that we had drawn £150,000 from reserve——

I ask you, having told me your view as chairman, I ask you—and, after all, you have great experience—to tell me whether in your view the ordinary investor would attach any, and if so what, importance to these words, "adjustment of taxation reserve"?—I could not answer that. They attach great importance to the other point.

I am not at the moment dealing with any other point.—I am sorry.

Did you anticipate or did you not anticipate that the ordinary investor would attach any importance or significance whatever to these words, "adjustment of taxation reserves"?—I think naturally he would attach some importance.

What importance do you think he would attach to them?—I am not qualified to answer that.

Would you, yourself, with your financial knowledge and experience, would you have attached any importance to them?—I have already told you the moment they were suggested to me I agreed.

That is not an answer to my question. Would you have attached any importance to them?—I should have attached some importance to them.

What importance would you have attached to them?—You are asking me questions which would be much more suitable to be dealt with by accountants of some description.

If you will forgive me, Lord Kylsant, that is exactly what I am not doing. I am seeking to consider the effect of these words on the ordinary man in the street, and not the technical meaning. I asked you to tell me whether you, yourself, would attach any, and if so what, significance to these words?—If you put it that way, I should say I should certainly attach some significance. The extent to which anybody might attach significance I am not really in a position to answer.

Are you able to explain to me more nearly what significance you would attach to them?—I should attach to them what it states, that there was an adjustment of taxation reserves.

Look at the profit and loss account for the year ended December 31st, 1926. You see what you told the shareholders. You told them quite plainly, in capital letters, that you were transferring from the reserve fund £150,000?—Yes.

The shareholders would know, by looking at the balance sheet, that after the transfer the reserve fund was £1,450,000, and would also know that before the transfer the amount was £1,600,000?—Yes.

All that you tell the shareholders quite plainly?—Yes.

You never told the shareholders, did you, or where did you tell them, that you were bringing into this year's balance £550,000 from the E.P.D. reserve?—I do not think it is exact to say it is being brought in from the E.P.D. reserve. I think it only became available in the year 1926, which is an entirely different proposition.

Let me accept that. Let us assume that you were bringing in an entry from an E.P.D. reserve to the extent of £550,000, which only became available that year. Where do you tell your shareholder that?—We have never told him how the balance of profit and loss is made up.

I quite agree, but you have told him that in respect of the year 1926 it was right and fair and proper that

the shareholders should have an indication ?—That we were passing through a difficult period.

Bearing that answer in mind, where do you tell your shareholders in this document that you are making use of a credit from E.P.D. reserve which credit had become available for the first time that year ?—There are two things. There was the transfer from the open reserve and the addition of the words "adjustment of taxation reserve." I think that fairly covers the point.

It certainly is not in the transfer of £150,000 ?—You must take them together.

You can leave out that, as far as the £550,000 is concerned ?—I should not go as far as that.

Do you mean to say that the shareholders would have an indication of the fact that £550,000 credit was being made use of by reason of the fact that you say "transfer from reserve £150,000" ?—You take the two things together. The £550,000 came into the company for the first time that year. Taking the two things together, I think it was a fair statement and an accurate statement of the company's position.

You say that the shareholders get that indication from the words "adjustment of taxation reserve," coupled with the words "transfer from reserve fund" ?—Yes.

Sir William Jowitt said that any shareholder looking at the balance sheet might say that the company was paying 4 per cent. as the dividend on its ordinary stock. The dividend had been 5 per cent., but it had fallen, and there had been a transfer from reserve of £150,000. He added: "In your view, would there be anything in that document to cause any alarm to shareholders ?"

Lord Kylsant replied that when shareholders saw that the dividend had fallen from 6 per cent. to 5 per cent., and then to 4 per cent., they were naturally concerned.

The only thing which would occasion any alarm to the shareholders in connection with the profit and loss account was that the dividend was now 4 per cent., whereas the year before it had been 5 per cent., and the year before it had been 6 per cent. ?—Yes.

And nothing else at all ?—Coupled with those two things. You cannot only take one part. Coupled with the fact that there was drawn £150,000 from the external reserve, and the remark "adjustment of taxation reserves."

I chose my word "alarm" with some care. In your view, leaving out the rate of dividend for the moment, was there anything in this document whatever which would cause any alarm to the shareholders ?—My personal view is that beyond the facts stated, there was nothing, either in the document or in the business, to cause any alarm to shareholders.

There was nothing in the document to cause any alarm to shareholders, and in your view there was no reason why they should be alarmed ?—Yes.

There is nothing in this document, in your view, to cause any alarm to a shareholder ?—Except that the profits were going down for three years running.

That leads me to ask you a question or two about the business itself. The year 1920, you told us, marked the crest of the wave, and was the end of the boom. The year 1920 particularly had been a very satisfactory year ?—Yes.

You were wisely and prudently putting aside in the year 1920 for the future interests of the company. You put aside special debits of over half a million in that year ?—Yes. They were to meet special liabilities. It was not the setting aside of a large sum without expecting liabilities. It was provision for expected liabilities.

It was setting aside money for contingencies ?—It was rather more than that.

The Attorney-General then produced one of the documents which had been exhibited during the case, and suggested that it showed that in the year 1921 there was a deficit of £450,000, and there was brought into the profits of the year £1,120,000 by way of special credits. The witness said that the latter figure represented bonuses received from certain companies. He would not agree that those bonuses were in the nature of non-recurring items, pointing out that a big company had many non-recurring items.

They were bonuses paid by companies and represented earnings over a period of years of those companies ?—Some of them.

Let us look at the next year, 1922. Do you see the deficit is £135,000, after the investments have been given credit for. There are £860,000 of special credits. The special credits exceeded the special debits by about three-quarters of a million ?—Yes.

Down to those years 1921 and 1922—do not think I am complaining—there is nothing in the accounts at all; the words "adjustment of taxation reserves" do not appear ?

The Judge said he noticed the words "fleet depreciation fund," and he inquired what it referred to.

The Attorney-General replied that it was a fund created in the war. It was not an earmarked fund.

Sir William Jowitt then referred to the balance sheet, which stated, "Profit for the year, including dividends on shares in allied and other companies, less depreciation of fleet." The deficit in the year 1923, after credit for investments, was £20,000.

Lord Kylsant: I should like here and now to say that I have never seen the document which you are reading from. I am not responsible for the way it has been made up, and I do not know personally that the figures are correct. The way it is made out, quite frankly, is grossly misleading.

The Attorney-General said he would not seek to hold Lord Kylsant responsible for the way the document was made out, and he asked whether it showed that in the year to which he had just referred special credits of £800,000 were brought into the accounts. The witness said he saw that figure in the document.

If you turn to the profit and loss account for the year to December, 1923, you see that the word "profit," as it was before, has now become "balance" for the year ?—Yes.

Why was that ? Do you know or was it an accountancy question ?—It came before me. Whenever a thing comes before me and I find it is strictly accurate, I agree to what is suggested. I always agree at once. That is my business principle. We do not publish a trading account, and directly my attention was drawn to the fact that "balance for the year" was more strictly accurate than "profit for the year" I approved at once.

What is the exact significance that you attach in your mind to the distinction between the word "profit," which had been the word used hitherto, and the word "balance," which appears in 1923 for the first time ?—When I became chairman 27 years ago the company had a capital of £900,000, but it has grown bigger and has received its revenue from a large number of sources, and the original way of talking of a profit for the year was misleading and inaccurate. Directly my attention was drawn to the fact that it was more accurate to say "balance for the year"——

My difficulty is, why do you think "balance" is more accurate than "profit" ?—Because it is not a trading account. If it had been a simple company owning 20 or 30 steamers, and the result of the year was simply the profit on voyages, a profit and loss account would have been a trading account, as it was originally.

Do you think that a shareholder would have attached the slightest significance to the alteration of the word "profit" to "balance" ?—I think so personally.

You do ?—Yes, I do. I should have done it a few years earlier if my attention had been drawn to it.

The deficit in 1924 is shown at £97,000 ?—Yes.

And the special credits are £870,000—that is to say, roughly £800,000 in excess was brought into that account ?—Yes.

Let us look at the years 1921, 1922, 1923 and 1924. In each of those years a dividend of 6 per cent. on the ordinary shares was paid ?—Yes.

The amount required in 1923 and 1924 to satisfy the debenture holders was £218,000 ?—Yes.

Although it is right to say that you have told us that depreciation was on the generous side, yet it is a fact

that in every one of those years there was a deficit before you had paid the interest on the debentures?—I should have to look into that. I cannot answer that sort of question. As chairman of the company, on questions of policy, I recommended my colleagues as to what they should decide. The actual form of the accounts is drawn up by the accounts department, and they submit recommendations.

I want you to apply your mind to the question I am asking you. You told me, when I was dealing with the year 1926, that there was no need for any shareholder to have any alarm?—Yes.

I am looking at the history of the company to see whether there was any need for any shareholder to have any alarm. I am taking four years, 1921, 1922, 1923 and 1924, and asking you this: Bearing in mind your point with regard to depreciation, and subject to that, is it right to say that in every one of those years there was a deficit before you had paid anything in respect of your debenture interest?—The charge for debenture interest comes on the company before depreciation. There had been enormous sums allowed for depreciation. You pay debenture interest before providing for depreciation.

Take the year 1923, which is the one with the smallest deficit. After the interest on investments comes in, this table shows a deficit of £20,000. I am suggesting that that deficit of £20,000 is not arrived at after including the payment of debenture interest, but you have got to pay your debenture interest of £218,000 on the top of that deficit?—I am being asked questions on a document I have never seen before, and there are figures with which I do not agree.

I am pointing out to you that, subject to your depreciation, in every one of those years from 1921 to 1924 there was a deficit even before you paid your debenture interest?—I think that is a very misleading way of stating the facts, grossly misleading in my opinion.

In those four years did you consider that the company was getting into serious trouble?—No.

In answer to further questions, Lord Kylsant said that from 1925 up to 1927 things were steadily on the upgrade, although they were moving slowly.

The Attorney-General inquired if things were going well with the Royal Mail Steam Packet Company in the years between 1921 and 1924. The answer was that they were going in a normal way for shipping in difficult times. Things were, of course, on the downgrade. After 1924 difficulties in connection with the business became more serious, particularly in regard to competition and competitors. The United States Government were subsidising shipping.

The Attorney-General: You can go farther than that and say that the French Government started to subsidise.

Witness: It was very difficult to find from the French finances what they were doing. I understand that for some years after the war, when they were not paying us any interest on our loans, they were simply handing over to every shipping company sufficient every half-year to pay a 5 per cent. dividend and any losses they had. It did not appear in the budget of France.

As from the end of 1924, this was the situation: the volume of goods to be carried had shrunken very considerably as compared with the end of the war?—I could not answer that question on the particular years now.

There did come a time when the volume of traffic fell off. The volume in 1920 was abnormal?—Yes.

And that abnormal situation had ceased to exist by 1924?—Yes.

From 1924 onwards was this the situation, that there was a quantity of tonnage available to carry goods far in excess of the volume that required to be carried?—I could not answer that question without reference.

Give me your impression as a great shipowner. Am I saying anything that seems unlikely when I state that from 1924 onwards the available quantity of shipping was far in excess of the volume of goods required to be carried?—After the war we were first very short of tonnage, and then there was a great increase of tonnage which was built. So far as 1924 is concerned, quite frankly, I would like to look up the facts.

At any rate, the situation prevailing round about that time was a totally different one from that which prevailed just after the war?—Yes.

That becomes important on another branch of this case. Will you tell me why you say this table to which I have referred is grossly misleading?—I cannot question the accuracy, but I feel that it is a table you could cross-examine any Chartered Accountants or heads of finance upon. They could deal with it. I have never even seen it.

This table or document shows the build-up of the balance sheet?—I am not disputing that, but you are cross-examining me about a thing I have never seen before.

I don't want to wrangle with you, but you tell me that you have not seen the document, and cannot be responsible for the make-up?—That is so.

What you said went much farther. You said that the document is grossly misleading. Why is it misleading? I see nothing misleading in it. What do you say is wrong about it?—We decide what we shall write off for depreciation. There have been enormous sums for depreciation. In 1926 there was £626,000 for depreciation.

That was the figure you charged in your books?—After we had considered the accounts. The profit and loss account, if we had not made these internal reserves, would not show the debit balance, as you call it.

I will tell you what I am going to say about this. You can clarify it if you think right. Taking the years 1921 to 1925 together, the special credits brought in exceed the special debits by approximately £4,000,000. That is only a matter of arithmetic, and it shows that during those five years the company was carrying on business and living on the reserves which it had previously stored up. Is that true or untrue?—I personally think it is untrue for this reason: the fleet of the group was standing at about £5,000,000 or £6,000,000 less, having been written down that amount, partly in those years. From 1911 to 1927 the reserves increased by £2,231,000. You should bear those facts in mind.

As against that, you should bear this fact in mind, that in each of those years there is a large sum which represents interest on investments?—Yes.

The companies paying that interest were, to a large extent, themselves paying their dividends out of reserves, which they in their turn had stored up?—In some cases, certainly.

Take an instance of where you were chairman, the Pacific Steam Navigation Company. It would be right to say that the Pacific Steam Navigation Company had never made a profit, after depreciating, since 1921? Do you know that?—No, I do not. It certainly has made some very good profits before providing for depreciation.

Looking at the accounts for the year 1925, you see the words "adjustment of taxation reserves"?—Yes.

Would you have regarded that account as a fair and accurate account without those words?—I should not have thought it was absolutely necessary, but when it was pointed out to me that it was desirable to have them, I agreed, because any amounts received during the year which were credited were sums that appertained to the year.

Do you think, if you had published the full facts to your shareholders at the end of 1925 as to the results of the five years' trading, that there would have been a panic?—No, I do not think there would have been a panic.

Perhaps panic is too strong. It has been said that one of the reasons justifying the use of internal reserves is to avoid disturbance. Do you think if at the end of the year 1925, you had published the facts of that year, that your shareholders would have been seriously disturbed?—No. I think that if I had published the full facts for every one of these years you have been talking about, the shareholders would have been agreeably surprised.

I am not talking about the group of companies, but of the Royal Mail Steamship Company. You think if you had published the full facts. the shareholders would have been

satisfied. I understood it was one of the main justifications, from the business point of view, for the utilisation of internal reserves, that it is to avoid fluctuations of shares and shareholders being disturbed ?—Yes.

Do you really tell me and the jury that if the facts as they existed at the end of 1925 had been made public, the shareholders would not have been seriously disturbed ?—No, if it was made public exactly how much was written off for extra depreciation, and how much not only the Royal Mail Steam Packet Company, but its 34 other companies had reserved, I think they would have been agreeably surprised. That is my candid opinion.

As a hard-headed business man, do you tell the jury that the shareholders would not have been disturbed if they had known all the facts ?—If they had been published in the way that they are set out here. But if the full facts of the Royal Mail, the 100 per cent. companies, and the group had been published, nothing would have disturbed anybody.

If the shareholders had been told, "This year we have made no profit at all. We cannot pay our debenture interest out of current profits, but we propose to pay a dividend of 5 per cent.," do you think the shareholders would have been disturbed ?—This document is grossly misleading. You are talking as if there was a deficit, but the profit on the Nelson Line was £490,000 odd. That should be added on.

We do add it on, Lord Kylsant. That comes in as one of the special credits ?—It may come in just as well under "interest on investments."

Whether the shareholders would have been alarmed or not, "adjustment of taxation reserves" was put in, and you assented to that ?—Yes.

And do you regard it as being, as it were, a danger signal or an indication ?—I do not regard it as a danger signal.

A warning signal ?—I regard it as informing the shareholders of what was happening.

At any rate, after the publication of these accounts for the year 1925, with these words, nobody was in fact disturbed by the presence of the words. Were there any questions asked at any meetings ?—I think I had a fair number of questions.

Any questions asked about those words ?—No, not exactly. I do not recollect them.

The quotation of the ordinary shares remained steady, both before and after ?—I have not got those figures before me.

The Attorney-General then referred to evidence which had been given on behalf of the prosecution, when Mr. Cason was in the box. It was then stated, said Counsel, that when Mr. Cason attended at meetings of the Court of Directors of the Royal Mail Steamship Company, there were no discussions regarding the accounts. He asked the witness if that was correct.

Lord Kylsant said it was not correct, and pointed out that Mr. Cason was only present in the board-room for 20 or 25 minutes. If what Counsel had suggested was a record of what took place at the Court of Directors, it was absolutely untrue. He added that he had been looking forward to that opportunity to put the true position forward.

The Attorney-General: Mr. Cason has sworn that at the meetings at which he was present when the accounts were discussed, no mention was ever made at any of those meetings with regard to these reserves, or anything of the sort. When these matters are discussed, you would have your chief accountant there ?—When the chief accountant brings in the accounts to the Court, which is held once a year, a month before the annual meeting, the auditors have not passed the accounts. He brings in a full statement, and I go through every item on the balance sheet, first on the one side and then on the other in full detail.

What balance sheet ?—The balance sheet that he has submitted. I then go through every item in the profit and loss account. I answer my colleagues any questions they ask, and if the Court thinks that five gentlemen of the experience of my colleagues on this great company never asked any questions or knew about anything, well—— I listened to the evidence of our chief accountant with regret so far as he was concerned, because I felt it was absolutely and utterly wrong. We have the voyage accounts, and I see them every week, of every company. The full voyage accounts of the month are submitted to the Court of Directors, and either I as chairman, or the secretary, read out the results of each voyage, and then compare the corresponding voyage of last year, and when you have been through all of them, you read out the total and they know exactly what the company's steamers are doing.

I entirely follow your point when you say that the directors have an opportunity of having the voyage accounts and from them they ought to have known the position, but what I am trying to get clear is, was there ever in the presence of the accountant any conversations at all ?—Yes.

How often ?—Practically every year. The statement made was grossly misleading. I regret to have to say so, because I have worked with Mr. Cason for many years.

When Counsel was putting another question, Lord Kylsant said: "May I say just this: I always motored down to the City with one director. Another director, one of the ablest men on the board, always telephoned to me the night before, and asked to be motored down to the City. Always before the annual meeting he came down on purpose, so that he might cross-examine me in the most minute detail about the company's business.

Those directors are still alive and well ?—One I regret has passed away.

And some of them are near or in the City of London, and could easily come to this Court so far as you know ?—Yes.

Now come to 1926. Mr. Cason told us that you had instructed him to prepare a document which he called exhibit 6. Did he show it to you on October 12th, 1926 ?—Yes.

And this document showed that you had an estimate of a deficit ?—Yes.

You asked him what unpublished reserves you had got, and how you could meet the deficit ?—Yes.

Replying to further questions, Lord Kylsant agreed that it was decided that the bonus share scheme should not eventuate. Witness agreed that the E.P.D. figure in the document already referred to was placed at £350,000.

Lord Kylsant said he did not agree that the adjusting of reserves meant taking what was necessary to meet a deficit. Witness did not use the word "adjustment" for ordinary business. It was a professional word which did not come from him.

Supposing that the Nelson bonus had gone through, do you think the E.P.D. would have been adjusted to the tune of £350,000 only ?—I understood that there was about £350,000 coming in from E.P.D. returns. It afterwards came out that it was £550,000. I think that is right.

You are not suggesting that is why you left out the Nelson bonus ? When that did not materialise you moved up the excess profits duty figures ?—No, it was the other way about. When we found we were going to get £550,000 the directors of the Nelson Line postponed making a bonus until the following year. In that year you paid a dividend of only 4 per cent.—Yes.

Replying to further questions, Lord Kylsant said he had never come across shareholders criticising when the dividend was too big.

Did the shareholders know the company was living on reserves ?—I do not agree that it was.

Would you regard it as imprudent finance to pay a dividend of 4 per cent. when you are drawing from reserves ?—The whole of the circumstances have to be taken into consideration.

If you published the full facts in 1926, would the shareholders be seriously disturbed ?—I think not.

Or even disturbed. Do you really mean that ?—Yes, absolutely.

The report for that year was well received, was it not ?—Bearing in mind that we were drawing published reserves.

And the quotations of the shares remained constant ?—I never followed that up.

In respect of the year, there was a necessity for some warning ?—Yes, because it was the year of the general strike, which came about May.

Let us see what warning the shareholders got. There are the words "adjustment of taxation reserves," which would, I suggest, convey nothing to their minds. There is not much other matter to tell them that special credits of £750,000 were being used ?—I think you are inaccurate in describing what are called special credits as transfers.

If you had regarded them as transfers from reserve, you would have given a clear note of warning ?—I would consider the matter on its merits. They were not transfers from reserve.

Sir John Simon, objecting to the question, said that one of the figures was £175,000 for income tax. Was he at that stage of the case to understand that the Attorney-General was still going to say that that was a transfer from reserve ?

Lord Kylsant said he did not agree with the view that the Attorney was expressing. "You are asking me on the assumption that what you are stating are facts," he added.

I want you to deal with an assumption, if you will. I suggest to you that the £550,000 had arisen in this way. That in the old days substantially up to and including 1920, large sums of money had been put aside in respect of the liability which was then anticipated for E.P.D. ?—That is so.

As time went on, it was possible to gauge with some precision how much of that old reserve would be required ?—That is one way of stating it. We find out each year what we will get back from the Treasury, and that goes into the accounts for the year.

The reason why money came in in the year was because in the years 1918 to 1920 you had paid large sums of money and you were getting a refund of what you had paid some time ago ?—We did not know until 1926 that we should get this refund.

But you did get it ?—Yes, in 1926.

And that was a refund of something you had paid a long time ago ?—But we did not know until 1926, and when it was refunded it was paid straight into the profit and loss account. I fail to see that there was anything not strictly accurate in doing that, and it was part of the income of the year.

I am not suggesting it is inaccurate, but I am only suggesting that you bring the money in without telling the shareholders what you are doing. I say that that is misleading.

The Attorney-General then questioned Lord Kylsant with regard to one of his speeches, and asked, "There is nothing there to tell anybody that there had been any transfers from reserves over and above the £150,000 ?"—But there was not.

Let me suggest to you that there was a transfer from the reserve of a sum which became free, if you like, in that year, and there was a transfer of reserve in respect of the year 1926 of £550,000 E.P.D. ?—I thought we had already dealt with that.

You dispute it ?—I disagree with the view you take.

Did you discuss these matters with your co-directors ?—Yes.

Did you discuss with your co-directors the question of the utilisation of this £550,000 ?—I reported to them that it was in the revenue of the year.

And as to its utilisation ?—It arose.

So far as you remember, did you discuss the utilisation of the £550,000 in the year's accounts ?—I mentioned the fact that we were getting this through in the year. The Revenue paid it to us during that year, and it went in the normal course into the profit and loss account.

Do I understand you to say that in your view there was or was not an adjustment of taxation reserves that year ?—It met the demands of the Chartered Accountants, and I saw no objection to it.

Continuing his cross-examination after lunch, the Attorney-General asked: "I suggest to you that if the shareholders had known what we now know with regard to the year 1926, they would have been disturbed ?—Not if they had known it in 1926.

I think you said that they would have been gratified ?—They would have been very pleased if they had heard in 1926 what the financial position of the whole group was—and very surprised.

Why did not you tell them in 1926 ? What was the need for keeping anything back ?—There was no need to keep anything back.

Why was it desirable to keep anything back ?—We published everything about the whole group.

So far as the shareholders in this company were concerned, would they have been disturbed by the result of the year's operations ?—No.

Would they have been gratified ?—I think they would have been quite gratified.

The Attorney-General asked why, then, they should not be told about the result of the year's operations. Lord Kylsant replied that if one were going to do so, one must not mislead them, and therefore one ought to publish the whole details about the whole group in which they were intensely interested. He went on to explain that it was not an easy thing for the average man to understand; there were 35 companies in the group.

If it is not a very easy matter for the average man to understand, do you think, Lord Kylsant, that the ordinary man, looking at the accounts for the year 1926, would think that £150,000, and that alone, had been transferred from the reserves ?—That is all that had been transferred from the reserves.

Do you think he would have realised that £550,000 was a non-recurring item that had been brought in ?—In a big group like this you have constantly large non-recurring items coming in. That is my experience over the last 25 years, and you cannot judge this business by one year, or even two.

The question as to whether the shareholder would have been disturbed if he had known that this item of £550,000, as a non-recurring special item, had been brought in, was repeated, and Lord Kylsant replied that he did not think the shareholders would have been disturbed, because the non-recurring amounts that came into the accounts of a big group like this were very large.

Asked why, in those circumstances, the shareholders had not been told, Lord Kylsant replied that he did not consider that there was anything at all special to report.

The Attorney-General: Surely you must realise that it was a matter of great importance to the shareholders to know whether the accounts are swollen in any particular year by items of such a nature that they will not come in again ?—If you know that there are other items in following years, I do not agree.

We know, to take an illustration, that the only other time that this thing occured at all with regard to E.P.D. was in 1927, when the rest goes down. But surely you must distinguish, as a business man, between items which are normal earnings and items which are highly special and which do not recur ?—I do not take the view, in regard to a great group of companies like this, that because a non-recurring receipt comes in in one year, you must specify it; you have non-recurring receipts in many years.

Take a simple illustration. Is it important for a shareholder to know, in order to appreciate the true position, that the accounts of the year consist very largely of non-recurring items ?—I do not think it is when he has confidence in and knows the class of men who are directors of the company and the policy they have been carrying on for many years, which is one of sound, conservative finance.

Coming to the figures for the year 1927, which showed that that year was better than 1926, the Attorney-General pointed out that the amount put aside for insurance that year was £211,000, substantially more than the amount for 1926, which was £162,000. The amount

put aside for depreciation, however, was roughly £130,000 less in 1927 than in 1926.

Lord Kylsant replied that he was sorry the Attorney-General continued mentioning depreciation, but he pointed out that it was in every case far more than was necessary.

The Attorney-General: Then the deficit for the year 1927 is £334,000, as opposed to £540,000 in 1926?—It is better called a balance. I have told you from the beginning that I do not accept these as deficits.

The Attorney-General went on to say that he would use a neutral word. Continuing, he pointed out that the figure for investments in 1927 was £559,000, as compared with £267,000 in 1926, roughly £300,000 better, and asked if that were the result of the Nelson bonus. Lord Kylsant replied in the affirmative, and said that it might have been a dividend. It was actually a division of profits.

The Attorney-General: Will you agree with me to this extent, that a month before the bonus was declared, and a month after, the R.M.S.P. Company was exactly as well off?—I think that statement is grossly misleading. If by that you mean that the Nelson Line was one of the hundred per cent. companies, then there would be some substance in your remark, but then you must apply that to everything. The Nelson Companies were two separate companies, and they were very successful companies.

Is it a fact that the R.M.S.P. Company was just as well off a month before as it was a month after this bonus was paid?—If any one hundred per cent. company pays one pound dividend to the parent company, the parent company is in exactly the same position financially as if it had not been paid.

Is not the significance of the figure this, that the £300,000 which the Nelson Companies paid by way of bonus really represents, not merely earnings which the Nelson Companies had made in the year 1927, but the earnings they had made over a series of years up to 1927?—Without having the Nelson Companies' accounts before me, I should say "Yes." I mean by my answer that the whole £300,000 profit was not made by the Nelson Companies in that year.

Dealing further with the 1927 accounts, the Attorney-General said there were certain special credits, of a non-recurring nature, the extent of them being more than half a million pounds. He pointed out that, notwithstanding those facts, a 5 per cent. dividend was paid by the R.M.S.P. Company for 1927, representing an increase over 1926, though £150,000 was taken from disclosed reserves in 1926. Lord Kylsant replied that in 1927 the company did not take anything from published reserves, which had been steadily increasing. The company had received £232,000 back in respect of income tax, and had received a profit of £108,000 on the sale of steamers, and £17,000 sundry credits.

The Attorney-General: I am pointing out that these special non-recurring items came to over £500,000. Under those circumstances, why did you move up the dividend from 4 per cent. in 1926 to 5 per cent. in 1927?—For this reason, that since 1925 the results of voyages had been steadily improving, except for the one break, which occurred at the time of the great strike. The curve was rising slowly, but it was rising.

Let us see what happened in those years. In the five years period to 1925 you realised four millions of special non-recurring credits. In 1926 and 1927 are you not utilising an extra million?—I think it fairer, in order that the whole position should be understood to say this. The companies were in a very strong financial position——

I suggest to you that that is not true?—I know you do, and that is why I am trying to tell you the facts. I am talking of things I absolutely know.

You had a reserve fund of one and a half millions, and an insurance fund of £1,300,000, making £2,800,000; and, Lord Kylsant, in these seven years ending in 1927 you had utilised 5 millions of special non-recurring items—that is, twice as much as your published reserve funds, to enable you to carry on?—You have mentioned 5 millions—I have not checked the figure—as if it were something enormous; but these companies had altogether over 13 millions of reserves; they had a fleet which cost over 100 millions, which should have been written down to 60 millions, and was written down to about £54,000,000. So that there was about 17 millions after all these had been paid, and you say, "What an awful thing; this company has actually used 5 millions to do something."

I am not saying that this is an awful thing, but that at least it is a thing of which the shareholders should have been told?—I think the interest of the Court of Directors was the interest of the whole concern.

Do you think it would have upset the shareholders if they had known about the utilisation of that 5 millions over the seven years?—No.

Then again I ask, why not tell them?—I think we carried on the business in a way which was to the best interests of the company.

Do you think the shareholders would have been agreeable to your getting your commission in 1927, which amounted to £27,000, if they had realised the facts about that 5 million pounds?

Lord Kylsant, in reply to this question, mentioned an occasion some years ago when he had thought that a commission of 1 per cent. was excessive, and when he had altered it to ½ per cent. That alteration had been carried unanimously at a general meeting of the company.

The Attorney-General then repeated his question as to whether the shareholders would have objected to his commission, and Lord Kylsant replied that he did not think they would have done. He added that in 1928, when his commission was also due, he had not drawn it.

The Attorney-General: Coming back to 1927, the special items amount to £512,000?—These are things that come in as the ordinary receipts of the company. There is nothing wrong about it, nothing that you have to apologise to anybody for, any more than a member of Parliament who draws £400 a year would apologise.

After all, people know that a member of Parliament is drawing £400 a year, and I am not suggesting that there would have been the smallest objection to any of these items in the accounts if the shareholders had known. What I am criticising is that you are utilising and putting to the credit of profit and loss account £512,000 in this year without the knowledge of the shareholders, which enables you to pay a dividend of 5 per cent., and therefore qualifies you for your commission?—The money comes in in the ordinary way; it is one of the receipts of the year.

Let me ask you about another receipt for that year (1927). There is a credit in respect of dividends and bonuses from allied or other companies of £559,000. Part of that was a dividend from the Pacific Steam Navigation Company, amounting to £60,000. Is it the fact that that was paid as to £10,000 in cash and as to £50,000 by the transfer of ordinary shares in the White Star Line (2s. paid)?—I should not put it that way, but it was the actual result. What actually happened was that the Court of Directors of the Pacific Steam Navigation Company offered to the Court of Directors of the R.M.S.P. Company these shares at par, and they took them.

In the course of further discussion about these shares, the Attorney-General said that the R.M.S.P. Company had received the £10,000 in cash and £50,000 in shares (2s. paid), so that the value of the shares was £500,000, and there was a liability in respect of uncalled capital amounting to £450,000. Lord Kylsant's reply was that this was not quite accurate, and that the shares were not part of the dividend. In reply to a question by the Judge, Lord Kylsant described it as an ordinary purchase of a block of shares.

The Attorney-General: Did the holding of those shares involve the R.M.S.P. Company in the possibility of an enormous call for unpaid capital?—You have already explained to me that when a 100 per cent. company pays a dividend, the parent company is none the richer. Therefore, if the parent company buys unpaid shares from a

100 per cent. company, it must be none the poorer—or your argument must be wrong.

I think, if I may say so, that you had better not try a combination of logic and law.—I would not touch law for anything.

The Attorney-General then drew a distinction between a company issuing the shares and a parent company holding them, and said that if the Pacific Steam Navigation Company, for instance, found itself confronted with a very large liability in respect of unpaid capital, and could not pay it, it could always be wound up. He asked if the shareholders of the R.M.S.P. Company had been told anything about these shares. Lord Kylsant replied that he could not remember what he had said then, but he pointed out that these things were published, in the shipping papers, directly a transfer was registered.

Asked if he had sounded any note of warning to the shareholders in 1927, Lord Kylsant said he did not think he had said anything of that nature, but he could not remember exactly all that he had said in the last twenty years.

The Attorney-General then quoted extracts from the directors' report for 1927. One of these made reference to the fact that the North American apple crop had not been so good as in previous years, so that the business of the company had been affected thereby. He asked if Lord Kylsant did not think that the shareholders would have been just as much interested in the transfer of £232,000 (received in respect of income tax) to the profit and loss account, had it been stated, as they were interested in the North American apple crop. Lord Kylsant replied that the statement about the apple crop was not made by him personally, but by the Court of Directors, and indeed it was a matter of very great interest to the company's business. He did not agree with the Attorney-General's suggestion.

The Attorney-General then went on to refer to Press statements in order to indicate that the payment of a 5 per cent. dividend by the R.M.S.P. Company in respect of 1927 was very well received. Lord Kylsant replied that, as he had already stated, the business was recovering from 1925 onwards.

A leading article published in the Press on May 12th, 1928, was mentioned specially by the Attorney-General, referring to the satisfactory recovery in the profits of the R.M.S.P. Company in 1927. He pointed out that the writer of that article was obviously under the impression that there had been no special non-recurring items brought into the accounts for the year 1927, and he went on to suggest that when Lord Kylsant had made his speech to the shareholders, a fortnight after the publication of that article, he had had a golden opportunity to correct any misapprehension. Lord Kylsant replied that the Attorney-General was suggesting that he had read the article at that time.

The Attorney-General then went on to refer to Lord Kylsant's speech to the shareholders in May, 1928, and quoted extracts to the effect that the accounts set out the position very clearly, and that the results for the year might be regarded as not unsatisfactory. He asked if those statements were true, and Lord Kylsant replied that they were.

The Attorney-General: Of course, it was a very difficult time, and you were fighting very keen competition; in view of the difficulties of the time, you regarded the accounts of that year as not unsatisfactory?—In view of the difficulties of the time I thought that the fact that the company was steadily doing better was very satisfactory. I think the expression I used was "not unsatisfactory."

The Attorney-General asked Lord Kylsant what provision was being made for taxation.

Lord Kylsant said he must leave that; he thought it would be clearly dealt with from the witness box later on.

The Attorney-General: The accounts set out the position very clearly?

Lord Kylsant: That was my belief, and it is still.

Do you really think the ordinary shareholder of the company would have had the slightest idea that in order to pay that 5 per cent. dividend you had to dip your hand into such matters as excess profits duty?

Raising his voice and emphatically banging his fist on the ledge in front of him, Lord Kylsant replied to this question, "We did not dip our hands into it."

The Attorney-General said he had not meant to use an expression which might be misconstrued.

"If my words are clumsy, I am sorry, Lord Kylsant," he declared. "All I meant to convey was that this amount of £232,000 was brought in. Do you think that the ordinary shareholder would have had any idea that you were utilising that sum?"

Lord Kylsant: The sum which we had received during the year?

The Attorney-General: The sum which had become free during the year. Do you think the ordinary shareholder would have the slightest idea that you were relying upon such an amount as that?—I think it was quite a right amount to carry to profit and loss account.

That is not a proper answer to my question. Do you think the ordinary shareholders would have had the slightest idea that you were relying upon items such as that to pay a 5 per cent. dividend?—I think it was a fair statement of the position.

Remarking that he would try once more, the Attorney-General again put the question, and Lord Kylsant replied that he did not think the ordinary shareholder would appreciate how such a great concern as this company was managed and must be managed.

Sir William Jowitt: Do you think that if the ordinary shareholder had had any idea of how this was obtained he would have been much disturbed?—I don't think he would.

Do you not think it was a pity now that the accounts did not set out the position a little more clearly?—No, I think they were done absolutely correctly, and done absolutely in a high-class way.

At any rate, whatever the position would have been, if the shareholder had been told things which he was not told, the shares remained steady. In fact, the ordinary shares went up, did they not?—I cannot tell you in the least. I have never been interested in the Stock Exchange prices of shares.

You do not follow the prices of your shares at all?—Very slightly.

I should have thought it was what a chairman of a company would do, because he would want to avoid violent fluctuations of the shares?—Oh, from that point of view, yes.

Further questioned on this matter, Lord Kylsant agreed that the ordinary shares might have gone up slightly.

The Attorney-General: Do you think the position really justified that going up?

Lord Kylsant: Yes, certainly. The business has been steadily improving since 1925—going up gradually.

Just look at exhibit No. 13—or 19, I think, is the one for this particular year. It is a document which was produced at the Court of Directors. There is nothing here, is there, about an item of £232,000 being utilised?—No, that is not there.

If you discussed these things at the Court of Directors, why not have it down in black and white for the Court of Directors to see it?—The answer is quite clear, Mr. Attorney. The directors were passing a form of accounts, in black and white, that was going to be published with figures in red ink, giving the figures for the previous year. Each of the directors had this before him. I went through every item.

That is the explanation?—That is the explanation.

Do you tell me this is a mere copy of what is going to be published?—I think my answer is quite correct. It is what is going to be published. It is going to be published after it has been submitted to the auditors. This was before it was submitted to the auditors, and subject to any qualifications the directors desired made

in the form after I had explained every item to them. They then passed it, with or without alteration, and it went to the accountants.

That may be a very good justification for the figures not being on this document, but if these matters were discussed between you and the Court of Directors, how is it that there is no document ever put before the Court of Directors which showed these figures?—The directors get the amounts of every voyage put before them, and being all very intelligent men, they see what the debit and credit is, and how the totals compared with the previous year. They also see how the company's ships are doing compared with the corresponding voyages of the same year.

You may read through every voyage account, but you won't see this figure of £232,788, will you?—No.

Why is there no paper before the directors which shows that is going to come into the account?—It does come into the account and they all know it.

I have got this controversy between you and Mr. Cason. If it is a fact that these things were discussed at meetings of the Board, I should have expected to find some piece of paper on which these figures were written down, so that they might be before your own Board, and I do not find it?—I would have the particulars before me. The whole question of how the company was doing was being constantly discussed. Our Board meetings take from one to one and a half hours. We discuss how the company is doing, and we then lunch together in a private luncheon hall, where things are again discussed. I constantly see my colleagues in between Courts, and the majority of them know as much of how the company is going on as I do myself.

Is it a fact that there never was any paper put before your fellow-directors showing, for instance, how this £232,000 in connection with excess profits duty had been brought into the account for the year 1927?—I could not say yes or no to that. I could not say exactly what was done four years after. I have not got the happy legal memory that members of the Bar have.

Do you really tell me that if, with regard to those accounts for the year 1927, instead of making the speech you did, you had told the shareholders exactly what the history of this company had been for the last seven years, that the price of those shares would not have fallen down straight away to practically nothing?—I cannot express an opinion on that; you might as well ask me if in some of the years when we earned 15 per cent., but only paid 6 per cent., we had paid out 15 per cent., the shares would have gone up in price three times over.

Would there have been a panic if you had told your shareholders what we now know?—I do not think there would have been any panic. It would not have been in the interests of the company, and it would have enormously encouraged competitors.

Asked how he thought competitors would have been encouraged, Lord Kylsant replied that, in his view, the man who was competing with a big concern always wanted to know everything about it, and tried to get as much information as he could. "My idea as a chairman," he said, "is that it is my duty not to part with that information."

You mean this, that if your competitors had known how desperately difficult the position was becoming, they would have been cheered up?—Not desperately difficult. I don't agree with your language at all. I entirely disagree with your language.

Let me put it this way, then; if your competitors had known how difficult the position was becoming, they would have been cheered up?—I could not even agree with that. If they thought we had been doing a little worse, it might have encouraged them. I do not use any of that strong language.

Again, what did you mean by saying that your competitors would have been encouraged?—I always think that when you are fighting people, the less they know about your business the better it is for you and the worse it is for them.

Sir William Jowitt asked that if one assumed that the company was flourishing, building up huge reserves, and so forth, would the publication of that information encourage competitors?

Lord Kylsant said he thought it would. You could encourage competitors by showing them that you were doing magnificently.

Do you encourage competitors by telling them that you have not made a profit since 1920?—I do not agree with that statement. It is absolutely untrue.

Do you encourage competitors if you tell them that you have not had enough out of current earnings, after providing for depreciation, to pay debenture interest?—That is not true.

In which year, since 1920, do you think there was enough out of current earnings after providing for depreciation, to pay debenture interest?—I think your statement is incorrect.

In which of these years do you think there was enough to pay debenture interest?—I think, Mr. Attorney, that is a very misleading question.

Which year is the year in reference to which that is misleading?—I think it applies to several of them.

Tell me one of them?—I would rather put it the other way. In the year 1926 there was not sufficient to pay debenture interest.

Is your answer, then, that there was enough in every other year out of current earnings after depreciation?—No, I didn't say after depreciation.

What I am putting to you is that in no single year since 1920 had you been able, after depreciation, to pay your debenture interest out of current earnings?—I entirely disagree.

The Attorney-General, on receiving this last answer, remarked, "We will leave it at that." He then proceeded to deal with matters relating to the year 1928. He had already suggested, he said, that the words "adjustment of taxation reserves" were words which would not, and to Lord Kylsant's knowledge would not, convey anything to the mind of the man in the street. He thought Lord Kylsant had assented to that.

"I do not agree," said Lord Kylsant.

The Attorney-General: Is this right, that in 1928 the words "adjustment of taxation reserves" had disappeared?—Yes.

And instead of them I find, "After crediting income tax reserves not required?"—Yes.

Lord Kylsant agreed that according to the table which was before the Court, the item referred to accounted for a sum of £350,000 being brought into the accounts for the year.

If you publish that to a shareholder, the shareholder knows that the balance for the year has been swollen by the crediting of income tax reserves not required?—Yes.

And he is free, if he likes, to ask a question?—Yes.

And if the Board does not reply, and he can get enough shareholders to agree, he can vote the Board out of office?—Yes.

Lord Kylsant said he did not know how the change of language arose. He did not think it originated with him. It might have been done by the accountants' staff, but he did not know. He appreciated the difference between the two expressions which the Attorney-General had mentioned.

Sir William Jowitt: I have now to come to another part of the case. Before you published your accounts, either for 1926 or 1927, you had made up your mind that you were going to have a new issue?—We had been discussing it for some time. The letters are in Court.

Before publishing the accounts in respect of 1926 or 1927, you had it in your mind?—As a possibility, yes.

Let me ask you from the point of view of the prospectus a few questions. I am not going to ask you technical legal questions or technical accountancy questions—that would not be fair. On the other hand, I am going to avail myself of your business knowledge and experience. Do you think that the duty of a person who puts forward a prospectus is to put forward all relevant facts, fairly and squarely, so as to enable an investor to form his own judgment?—Yes.

And you would agree, would you not, that it would be deplorable if that standard is ever departed from?—I agree.

And deeply deplorable if that standard is departed from by a man in a high and eminent position in the City of London?—I agree.

Lord Kylsant, did you put forward all the relevant facts in your possession to enable the investor to form his own judgment?—I put forward absolutely a true and correct statement, and I took these steps; not only was it first passed by one of the leading firms of solicitors in the City of London, but then at my request they submitted it to a leading Counsel. I said, "Who is the best man to consult on this particular question and work." They mentioned the name of a distinguished member of the Bar and we got his opinion. Then before that, or after that, it was twice before my colleagues and was very fully discussed, and in my view it was an absolutely straight, true and fair description of the company.

The Attorney-General remarked that, as Lord Kylsant was no doubt aware, Counsel only advised upon the facts put before him.

"Do you state to the jury," he asked Lord Kylsant, "that you put before the investor all relevant facts, so that the investor might have all material on which to make up his own mind—did you?—I say yes.

In fact the issue was very largely over-subscribed?—Yes.

And, of course, the issue was not in the nature of a gambling thing. It would have been regarded, would it not, as almost in the nature of a gilt-edged security?—At that time the security over and above the debentures issued was over £14,000,000, and even to-day it is many millions.

Then I am right in saying that it would have been regarded not as a gamble, but as appealing to the steady investing public?—Yes.

Amongst whom, Lord Kylsant, there would very probably have been many persons in quite humble circumstances?—There are always some.

The Attorney-General put it that the issue was stated to be £2,000,000 5 per cent. debenture stock, at the price of £92 10s. per cent. The actual amount brought in would be approximately £1,850,000.

Lord Kylsant agreed.

The yield per cent., Sir William Jowitt suggested, would be round about 5½ per cent.

Lord Kylsant said it would be under 5½ per cent.

You see the paragraph beginning "Although this company." Let us read it together, shall we? It goes like this, does it not? "Although this company, in common with other shipping companies, has suffered from the depression in the shipping industry, the audited accounts of the company show that during the past ten years the average annual balance available (including profits of the Insurance Fund) after providing for depreciation and interest on existing debenture stocks has been sufficient to pay the interest on the present issue more than five times over?"—Yes.

Do you remember the history of those last few words which appear in leaded type? Why were they put in in leaded type. Was it because it was a very important factor in enabling the ordinary investor to make up his mind?—It enables anybody who doesn't want to read the whole prospectus to see what was the position, and whether it was worth going into further.

And was it any criterion of the future prospects of the issue?—I was not responsible for them being put in with any idea of prophesying what the future was going to be.

I am not asking that. Did you intend the investor to be guided by this consideration: "This is what the company has done in the past and presumably will do in the future?"—It is telling him what the company has done in the past and what it may do in the future.

Exactly. It is simply giving, in so far as the past may give, some indication as to the future?—Yes.

And that is why you put the words in?—Yes.

Was it a fair indication of the future to take the average annual balance available over ten years?—It was a fair indication of the facts. As I say, I was not attempting, and I have never attempted in my life, to prophesy the future.

The question I want answered is this: Is it a fair indication as to the present earning capacity of the company?—In my opinion it was at that date an absolutely fair and accurate statement of the position, bearing in mind that the business had been steadily improving since 1925. It was a little better in 1926 and still better in 1927.

Do you remember telling me this morning that the years 1918, 1919 and 1920 were abnormal years?—Yes.

That was what we agreed upon?—Yes.

There was a vast quantity of goods wanting carriage and a comparatively small quantity of ships to carry them?—I agree.

But as from the year 1924 a wholly new situation had developed. You remember telling me that as from the year 1924 you were face to face with a wholly new situation?—I said that about competition.

How can it be fair to ask the investor in the year 1928 to judge the future by the past, if you take a period of ten years, which has three absolutely abnormal years at the beginning of it, and obscures altogether the difficulties of the period as a whole?—I do not think there is anything misleading about that. Everybody knew about the Vestey competition. It was no secret, and it was known over the whole of Great Britain.

This is the critical question, is it not? Supposing, instead of setting out average annual balances, you had set out the balances year by year, corrected as they would have been if Mr. MacArthur had written back those items into the appropriate years, you would have seen, would you not, that the great bulk of the money was earned in the first three years, which were followed by seven very lean years?—Less prosperous years.

The Attorney-General referred to a letter which had been produced, in which reference was made, he said, to writing back certain items into what were suggested to be appropriate years. The result of that, if it had been done, he suggested, would have been to show profits in the early years and deficits later on.

"That would have been very misleading," declared Lord Kylsant. "I think you are entirely mistaken about that, Mr. Attorney."

Would it have shown that the first three years were very much more profitable than the others?—Oh, yes, that applied to practically every business in Great Britain.

Then what is the relevance of asking the shareholder to make up his mind on figures based on an abnormality which occurred some ten years ago?—We are living in an after-the-war period, and you have to set out the thing in the fairest way possible. The Court of Directors gave the result of the dividends paid in the years.

Had the results of these earnings in the years 1918, 1919 and 1920 any relevance or significance as a test of earning capacity in 1928?—I think it is very interesting.

The Attorney-General said it certainly was interesting, but had it any relevance?

Lord Kylsant replied that the issue was to cost extra interest, and when there was a surplus capital account of over £14,000,000 at the time of issue, it was rather different to an issue by a company that had a capital of two or three millions.

Has this any relevance or any significance whatever as a means of judging the earning capacity in the year 1928?—I think so, certainly.

What relevance had these years 1918, 1919 and 1920 as a means of judging earning capacity of 1928?—As I have explained, shipping goes up and down, and there are cycles exactly like the waves of the sea. You have a long flattish period, and it rises and there is a big wave. Then down it goes and gradually it rises again. The year 1920 was the top of the wave. There have been five of these cycles in my business life. I started business in 1880, and I built my first ship in 1888. I was told when I was a young man of these cycles. Therefore I

say it has relevance, and you don't judge a shipping company by one or two or three years. You have to look at a cycle, and the fat years, like the lean years, have a distinct bearing on the whole. In 1925 we began to see a change; 1926 was better than 1925, in spite of the general strike, and 1927 was better again.

Cycles are all very well, but you have left out of account one factor—you have left out the war?—I have not left out the war.

Was not the abnormality of 1918, 1919 and 1920 due to the war?—The abnormality of 1914, 1915, 1916, 1917 and 1918 was entirely due to the war—naturally. We passed our dividend in 1914 and we showed that we had passed it.

About 1919, was not that abnormality a consequence of the war?—That was the beginning of a rise, and 1920 was the crest of a wave.

Exactly, Lord Kylsant. We must remember that there was a large diminution in tonnage. It is quite obvious, is it not, that 1918, 1919 and 1920 were abnormal owing to the effect of the war, which was still being felt?—I cut the war out, and I say that 1920 was the crest of a wave. It was due in any case.

In 1920, the abnormality was in part due to the war. Does that represent your view?—No. In the year 1918 abnormality was entirely due to the war. In 1919 a little part due to the effect of the war, but 1919 and 1920 are really the ordinary crest of the wave.

If that is true, why did you tell me this morning that those years were abnormal?—So they were, because the war had a certain effect upon them. It is awfully difficult to explain in cross-examination.

Will you explain to me why you thought it possible that any intelligent investor ought to have based his calculations for the year 1928 upon the earnings of the company in the year 1918, 1919 and 1920, and that is the point I want, and possibly the point the jury want?—I think it was right to give them that, although they know that those three years would be rather more than normal crests.

Does it not occur to you that it was absolutely misleading to take an average under those circumstances?—No.

Supposing you had set out those years, year by year, showing great profits for 1918, 1919 and 1920, and then the figures being written back, as Mr. MacArthur was going to do, showing the figures for 1923, 1924, 1925, 1926 and 1927, do you think there is a single person who would have invested in this debenture stock at 92½?—Of course, I cannot tell what Mr. MacArthur's figures would have been. I think the majority of people invest in a thing like this, when they know that there are fourteen millions between them and foreclosure.

If you had set out these figures year by year, do you think that people would have invested in the shares?—Yes. When the figures were set out accurately, not as Mr. Attorney has been setting them out.

Not as Mr. Attorney, as Mr. Cason has been setting them out on this sheet. If they had been set out as they are set out on this sheet, no investor would have invested his money?—No, because that is absolutely inaccurate. I never saw that statement before I came into tnis box, but in my view it is grossly inaccurate.

You have been commenting pretty adversely upon it?—Yes, because I have heard other gentlemen dealing with it.

In further answers, Lord Kylsant said he would never allow inaccurate figures to be put on any statement bearing his signature.

The Attorney-General: If the facts had been set out in the prospectus, as they have been set out in exhibit 21, do you think anybody would subscribe to this issue?—If they had been set out, as they have been proved to be in this Court, there would have been a good response to this issue.

I shall not put the question again.—I am sorry, Mr. Attorney.

The Attorney-General, referring to the report of 1923, asked Lord Kylsant, "Was that an honest and candid statement? I know what you are going to tell me?"—I am going to answer your question.

I observed that you looked at your table which contains a reference that the reserves for the insurance went up. Now look at the table, will you. In that year, 1923, you have not availed yourself of that £800,000?—I say it came into the profit and loss account.

Quite right, but it is of no interest to my mind as to what it came into. What I am interested to know is what it came out of. I suggest to you that what it came out of was reserve?—I suppose that income tax came out of the Treasury. I have not got the figures before me and I am sorry I cannot answer that. I am not an accountant. I am a shipowner.

Did they come out of reserves or not?—I don't believe it came out of any reserve; I believe it came in during the year.

Is not that a reserve arising out of pre-war transactions paid back? You see, Lord Kylsant, that has no relation to that year, except as a matter of accountancy. It does not relate to the year in any other way?—When you get money in that way, and you didn't know you were going to get it, I think it belongs to that year. If you do anyone a good turn twenty years ago, and you get £10 for it this year, you take it as a profit for the year, not twenty years ago.

I will take an illustration in order to put my point. Supposing, for the sake of argument, the £800,000, or a substantial part, could quite properly be called reserves, on that assumption, Lord Kylsant, would it be honest to say that in the year (1923) you paid 6 per cent. after adding to the reserves, when what you had done was to add to the published reserves, and deplete the unpublished reserves to the tune of more than £80,000. Would that be honest?—I think it would be, because in my view the company was building up these reserves. I do not admit that any money was taken from any internal reserves.

I quite follow that the matter was one for the accountants, and not for you. Therefore I can only ask you now on that assumption. Assume, if you will, that more than £80,000 had been taken from the reserves in the year 1923, would it be an honest statement to say in the year 1923 that you had added to the reserve when what you had done was to add to your published insurance reserve and withdraw more than £80,000 from your unpublished reserves?—I don't admit we have drawn anything from the reserves.

You say that all the way through?—Lord Kylsant assented.

Is it your view that if you had withdrawn anything you ought to have disclosed it?—I have not gone so far as that.

How far would you go?—In certain cases I should not think it necessary to publish anything. That is my personal view.

You were going to raise £1,850,000, paying brokerage of £1 per cent., so the net figure would be rather less. May I take it that more than half the money was already required to pay off the existing bank overdraft?—We had just built one of the finest buildings in the City of London. The land itself was worth half a million, £700,000 was spent in the building. That was the reason why there were overdrafts.

Sixteen months after you made this issue, are you applying to the Treasury for an extension of the guarantee?—Yes. Only in the case of £5,000,000, which my late friend, Lord Pirrie, arranged with the Treasury, and for five years. I told him at the time I thought it would be dangerous to take five years, and he said, "There will be no difficulty in getting it extended ten or fifteen years." Unfortunately he died before it fell due. That is the story about that.

A relevant circumstance to bear in mind when you decide what dividends to pay?—Yes, but I had information. I was in direct touch with the leader of your profession. He told me not to be worried about it, and that the cards were in my hands.

Anyhow, you haven't this card in your hand—the ability to pay what you owe?—As the Treasury did not extend the guarantee, there was a difficulty, and that is

the reason. But the debenture holders of this company are well protected still.

Are they ?—Yes.

What is the price to-day ?—I don't know.

Do you mean to say you don't know, Lord Kylsant ?—I do.

Do you tell the jury on your oath that you cannot answer that question ?—Lord Kylsant replied that he could give no other answer except that in his view the debentures were fully secured.

Lord Kylsant, it is to me a most extraordinary thing that you should tell the jury on your oath that you haven't the least idea.

Lord Kylsant (interrupting): I didn't say I hadn't the least idea.

What is your idea, then ?—I haven't looked at the matter for some days.

But when you did last look, what do you say about that ?—They did go down very low at one time. But they have since gone up, nearly double, I think.

Mr. Justice Wright: Will you tell me what is the date of the guarantee.

Lord Kylsant: It would be about nine years ago.

The Attorney-General: I thought you said five years before ?

Lord Kylsant: I think I said about seven years.

The Judge: And for what period was it ?

Lord Kylsant: For five years. And the associated companies raised just over £12,000,000, and they have paid over £2,000,000 in reduction, and they have paid every penny of interest up to date. The Government did not see their way to agree with the suggestion made two years before to continue it for five years.

The Attorney-General: In addition to other matters. Were you not under an obligation to find no less than two and a half million in connection with your White Star commitments ?—Yes. The total money raised was just over £12,000,000. We paid the instalments due which were £2,000,000, and there were just over £10,000,000 still running, but it was this £5,000,000 which caused the trouble, because the guarantee was only five years.

Now let me summarise the case I put to you here. I don't ask your assent to it, but to the fact that this is the way it is put against you. From the year 1921 to the year 1927 inclusive your company has steadily been making losses and living on items which came in in respect of its previous years ?—I don't accept, Mr. Attorney, your statement of the position.

But you expended £5,000,000 in reference to recurring items of expenditure ?—It may be so.

And that these all owed their origin to these years ?—No, I don't agree with that.

And that if you had set out these facts, there was no chance of anybody investing a penny piece in this issue ?—I absolutely disagree with your facts.

That to avoid setting out these facts you took the average for ten years, mixing up the whole abnormal period—that new period in which new conditions prevailed—and that when that was done you deliberately——

Lord Kylsant (emphatically): No.

Dishonestly ?—No.

And with the intention of defrauding those people who might be induced to invest their money ?—No, absolutely untrue.

This concluded the examination of Lord Kylsant.

Sir John Simon, re-examining, said: I just want to begin with one or two points about the prospectus. Will you take a prospectus in your hand. My learned friend, the Attorney-General, during the last four hours, has been asking you whether you think that anybody who knew year by year the course of the company's affairs in 1918 to 1927 would have subscribed for this issue. It may be there is somebody in Court who did. But you knew the history of the company for the past ten years. Did you subscribe to the issue ?—I very seldom buy debentures. I confine myself principally to ordinary shares.

I am asking whether you subscribed ?— One of m private companies did.

It was your money ?—Yes.

Were there trust companies under your control that subscribed to this issue ?—I know they sent in applications.

As a matter of fact the full application was oversubscribed ?—Very largely.

I want the jury to understand this. Is it a fact that you, youself, believe that this was an issue properly to be subscribed ?—Yes.

Now just look at this word "average." The learned Attorney-General has asked you a good many questions about the "average annual balance" and has called your attention to the fact that at the beginning of this period of ten years the figures would be better and that later they would reflect the depression in the shipping trade. Will you look at the paragraph. Do you observe that it begins with these words, "Although this company in common with other shipping companies has suffered from the depression in the shipping business." Do you see that ?—Yes.

"The audited accounts of the company show that during the past ten years the average annual balance available (including profits of the Insurance Fund) after providing for depreciation and interest on existing debenture stocks has been sufficient to pay the interest on the present issue more than five times over." As you understood the matter you were stating an average of ten years, indicating that at the end of the period the figures are worse—do you regard that as an indication to those who read the document that the position would be better at the beginning and worse at the end ?—That was the meaning of that.

You were asked why you chose ten years. It is not uncommon when issuing a prospectus to state an average for a considerable number of years back ?—I think it is a very ordinary thing.

I think I heard the learned Attorney-General say—and I am very glad to note this—that he doesn't suggest there is a single statement in that paragraph which is in itself untrue. So far as you know is any statement in the prospectus untrue ?—Every statement is absolutely true and a fact.

Had you ever any intention of putting forward any statement, the effect of which was untrue ?—No.

If it could be suggested that the effect of this paragraph was otherwise untrue, was that known to you ?—No.

In putting it forward, had you any intention of deceiving or misleading anybody ?—Certainly not.

This prospectus, I imagine, was authorised by the other distinguished members of your Board ?—Yes, we had meetings specially to discuss it.

In your experience of them are any of them capable of authorising a statement that they knew to be untrue ?—I should say absolutely no.

Now let us look at the ten years a little more closely. It begins, as the Attorney-General has pointed out, with three good years. That is right, is it not ?—Yes.

How far these years are good because the war is over, or how far they illustrate to a greater or lesser degree the cycle in trade, is that a matter which you or no one else can pronounce upon ?—No.

In so far as the years affected by the late war were concerned, the facts were as well known to the man in the street as to you ?—Yes.

Now I take the three years at the end of the period, 1925, 1926, 1927. Now let us take 1926 first of all, and I want you to refer to the annual report which I gather would be published in the May of 1927. I am reading a report taken from *The Times* of May 26th, 1927. Now will you sit down, Lord Kylsant, you have had a very long day. I want to see, with your help, what was the view which you held in May, 1927. We can all of us be so wise years afterwards.

The learned Counsel then proceeded to read the report of Lord Kylsant's speech, in the course of which he had referred to the depression in trade and the great increase of unemployment.

"You regarded that as a calamity, Lord Kylsant ?"—Yes.

Answering further questions on the report, Lord Kylsant said it was his view in May, 1927, that the trade of the country would recover. Indeed, he saw aspects that were distinctly encouraging, and he indicated at that meeting his belief in a favourable turn of events. This was, in his considered judgment, the position at that time.

In your view of the cycle of trade, was it your belief that it had touched bottom and was beginning to rise ?—That was my honest belief.

You say, "I am a believer in the principle of trade cycles, and throughout my business life have seen that it has been of seven to ten years' duration." And this is before the prosecution ?—Yes.

You incline to the view that an upward movement had already begun ?—Yes.

Sir John: I see that in *The Times'* report someone said, "Hear, hear," so it looks as if one of the shareholders thought so, too. I hope, Lord Kylsant, you had not misled him in any way. (Laughter.)—In no way.

You have heard the suggestion in cross-examination that the accounts published were calculated to lead shareholders to think that you had had a good year from the point of view of profit and loss ? Would you mind looking to see who it was who moved the vote of thanks to you ?—Sir John Fortescue Flannery, M.P.

And I see that in moving it he says this, "That the company was 88 years old, but there were no signs of senility, but, on the contrary, there were signs of activity, vigour and enterprise, and it was true that they had not had a good year from the view of profit and loss." Were you there when he said that ?—I was there.

That doesn't look, does it, as though your published report and balance sheet had misled the shareholders into thinking that it had been a good year ?—I quite agree.

That is the year 1926. Now take 1927. Is it quite clear, Lord Kylsant, now, on the figures that 1927 was a better year than 1926 ?—Certainly, yes.

Did you take that as a further indication that the wave was still on the rise ?—I did.

Is it not the general experience of anyone who understands a business, that once you get this cycle of seven, eight or nine years, going through a depression, when once the rise begins, is it, in your experience, continual ?—In my practical experience it always is.

Passing on to twelve months later to 1928, did you hold the view that the improvement was going on ?—I did, very firmly.

The North American apple crop for that year was considerably below the normal, and therefore shipping was smaller than in 1926. It looks as though you had mentioned this in your speech as a warning that a very important source of trading had got worse ?—Yes, one of the sources.

Then until this economic blizzard that followed, and then the initiation of this prosecution, has it ever been suggested to you that the profits for the ten years we have examined were not a fair average ?—Never.

As I follow there is an average in these cycles and that they include some good, some bad, and some moderate years ?—Yes.

We all appreciate the wide experience you have had of shipping concerns, is this ebb and flow as between 1918 and 1927 characteristic of the general course of British shipping ?—That is so, and books have been published on the whole question of shipping cycles.

Answering further questions, Lord Kylsant said that as he understood the matter he saw no objection to the bringing in of any of the figures that appeared in the balance sheet.

The suggestion is that something special should have been said about it. Do I understand rightly that these items which appear as special credits are one and all of them of the nature of receipts and distributable receipts ?—Yes.

No doubt some of them have a history behind them, but so far as you know they are distributable receipts ?—Distributable.

From time to time, your company would be selling ships or premises. If you did such a thing, and it realised a profit as you understood the matter, is it a profit for the year ?—Yes, the difference between the amount the ship had been written down to and the price you get for it.

Had you the slightest intention of misleading anybody ?—No.

In 1926, £270,000 cash was received by the company from the Revenue ?—Yes.

In your view, is that a receipt of the company in the year ?—Certainly.

In addition to that, in that year was there another £551,000 which was received from the Government in the year by way of constructive repayment ?—Yes.

And the accounts for 1926 are not settled or drawn up until the spring of 1927 ?—That is so.

By that time the situation was still more cleared up ?—Yes.

As you understood the matter, and understand it now, do you know any reason why these sums should not be regarded as distributable receipts in the year ?—I know of no reason.

Is that how you did regard them ?—Yes, and we acted accordingly.

In July, 1926, £70,000 was paid by the Revenue to the company in respect of relief under a section of the income tax ?—Yes.

As you understand the matter, is that received in the year ?—Yes.

It is in the nature of a proper distributable dividend item ?—Yes.

Do you know any reason why you should address the shareholders and tell them you had received that £70,000 ?—I know of no reason.

On the other hand, there is one definite transfer from a published earmarked fund ?—Yes, £150,000.

When you look at the profit and loss account, do you notice that the word "reserve" comes twice ?—Yes.

So far as you understand the matter, did you regard that as any indication that the adjustment of taxation reserve was quite separate from the transfer from the published reserve ?—Yes.

You are aware that the adjustment of taxation reserve in 1927 consists of two items, one income tax of £120,000 and the other E.P.D. figure of £232,788 ?—Yes.

Evidence has been given for the prosecution that the E.P.D. figure could not have been distributed sooner ?—Yes.

Are you able to appreciate how £232,788, which could not be distributed before, could be regarded as a portion of the distributable receipts of the year 1927 ?—I cannot. It seems natural to me that they should go into the ordinary receipts of the year.

It has been suggested that the special credits should be specially mentioned. Has anybody ever reproached you because you did not mention the special debits to the shareholders ?—No.

You in fact never did ?—That I know.

And whenever, having earned distributable profits, you put any portion for the time being aside you make no statement to the shareholders, and no one complains ?—That is so.

Have you done anything more than bring the sums back and distribute them later on ?—No.

MR. BRIAN MANNING.

Mr. Brian Manning was then called to give evidence on behalf of Lord Kylsant. He said he was a Fellow of the Institute of Chartered Accountants, and a partner of the firm of Messrs. Cole, Bond & Company.

Mr. Singleton: First of all, will you take in your hand Exhibit 105, of which the jury have copies. I think you assisted in the preparation of that document which has been used in the course of the case and not proved until now ?—Yes.

Witness agreed that that document in one column set out the rate of dividend which was paid in each of the years from 1911 to 1927. The paper also showed the actual dividend that could have been paid in the various years, and the figures were correct so far as could be ascertained from the books of the company.

These figures have been discussed, but after the year 1914, when £200,000 was taken from the reserve fund, there are six years in which there was put to reserve from profit and loss £1,360,000 in all ?—That is the total for the six years.

Money which, if it had not been put to reserve, would have been available for dividend purposes ?—Yes.

In the result, is the reserve fund in 1927 greater by £1,180,000 than it was at the commencement of the period ?—That is an addition made out of the profits.

Apart from that, there was some figure in the reserve fund ?—Yes.

What was it in 1911 ?—£80,000.

With regard to the insurance fund, in every year since 1911, apart from 1914, was there an addition to the insurance fund ?—Yes.

It is a free reserve ?—Yes.

In column 5 of that document, you set out the total increase in reserve between 1911 and 1927, which gives the figure £2,231,785 ?—Yes.

And is that figure, so far as you can trace, correct ?—Yes.

And then you show the dividends that could have been paid ?—Yes.

And the dividends which were paid in the last few years were paid without drawing on these published reserves, except for the £150,000 ?—Yes.

Witness proved two other documents which were summaries showing how the figure of £439,213 was arrived at in the profit and loss account of 1926 and similarly how £697,456 was arrived at in 1927.

Witness was questioned with regard to a document that Lord Kylsant had described as misleading, and he was asked : " In your view, in arriving at the results year by year in connection with that company, does ' deficit ' in that part of the page express the true position ? "

Witness replied, " In my opinion it does not."

Questions were being asked with regard to special credits when the Judge asked Counsel if he was likely to be lengthy with his examination. Mr. Singleton said there were many questions which he must ask, and the Judge then adjourned the hearing until Tuesday, July 28th.

SEVENTH DAY'S PROCEEDINGS.

Further evidence was given by Mr. Brian O'Donoghue Manning, who was questioned with regard to an exhibit headed " Statement to show Comparison of actual dividends paid with dividends which the company could have paid had they utilised for dividends all available profits instead of making additions to published reserves." Witness was also questioned with regard to two other documents.

Mr. Singleton : Yesterday I asked you some questions with reference to exhibit 21. Have you it before you again ? I want to direct your attention to the items described at the bottom of the sheet in which there are special credits. Take the year 1921, there are three items at the bottom of the column, which are described as special credits. I want to ask you, are those items which are all received during the year ?—Yes.

And in your view, are they properly distributable as profits of the year ?—Yes.

In the next year, 1922, there appears amongst special credits, E.P.D. £100,000 ?—Yes.

Can you tell me the position with regard to E.P.D. then ?—The position was that the company had made provision in its books for the expected liability for E.P.D. over the seven year period. It was ascertained in 1922, although not definitely that that provision was excessive, and it was decided to take £100,000 as the liability over-provided for.

Is that properly, in your view, described as a reserve ?—No.

Why ?—It is not a reserve, it is a provision for liability. Accountants describe it as provision for a liability where the liability is not actually payable at the moment when the entry is made in the books. The provision for E.P.D. was a provision for a liability which proved to be excessive and therefore it was regarded as a profit for the year and distributable as profits for the year.

Then with regard to the agreement as to obsolescence allowance, that dates from 1922 ?—Yes, that was the first time any item of that kind arose.

Counsel then referred to the statement of the Attorney-General who had said that he was going to say that the E.P.D. figure was a transfer from reserve, and Mr. Singleton asked " Is it right to describe either the £550,000 which appears as special credit in 1926, or any items for 1923 appearing as special credits, as being transferred from reserve ?—No.

In your view, they are something which comes to the company by way of obsolescence allowance, and not reserve at all ?—That is so.

And they are properly treated as income of the company for the year in which they are so received ?—Yes.

May I endeavour to deal in the same way with the point the Attorney-General raised with regard to income tax. Have you before you that which became exhibit 94 ? Dealing with the year 1926, does the document, which you have, show an item of £236,000 odd as at January 1st, 1926 ?—Yes.

I want to deal with items which come in in the year 1926. There is tax deductions from dividend, £121,237 ?—Yes.

That I understand to be a figure which the Attorney-General agrees is something received in the year ?—Yes.

The Judge : In the two years 1923 and 1924, more was taken out of the account in the one year than went into the account ?—That is so.

The Judge : In other years, it seems to be a little different in that respect, because substantially in 1926 and 1927 practically no more went into the accounts, and then you get to 1928, when £350,000 went out of the accounts, and, so far as I make it out, about £150,000 came in ?—Yes. May I explain with regard to 1923 ? In that year one starts with a balance on January 1st, 1923 of £529,000. During that year there was collected either from tax deducted from dividend, or repayments, a total of £365,000. On the other hand, £190,000 was paid in respect of liability, and that would come out of the reserve of £529,000 at the beginning of the year. Then the reserve at the end of the year 1923 was excessive and about £100,000 was taken from it to adjust the liability.

The Judge : About £100,000 more was taken out than came in ?—That is so.

Counsel : The year I was directing your attention to was the year 1926, because it is the 1926 figures which affect the first charge. There was taken amongst special credits £175,000, the figure which is given on exhibit 21.

Is the figure, £121,237, a figure which the company gets or acquires in the year 1926 ?—Yes.

The other two figures in that document to which reference has been made, I will also go into. One is for £5,000 odd ?—That was a claim the company had against the Revenue, and £5,000 was repaid in that year.

If that is a cash repayment, is it something available for the profit and loss account ?—Yes.

It is something which arises out of the year ?—Yes.

The figure of £70,000, a Section 34 claim. Will you explain that ?—That is a claim arising under Section 34 of the Income Tax Act which can be made in any year when the company have made an adjusted loss.

When is the claim made ?—The claim for 1925-1926 would be made during the year 1926.

And if the claim is made and allowed, should there be a definite increase in the amount which is distributable ?—Yes.

It is something which arises and is paid or credited during the year ?—Yes.

Is there any distinction between the £121,000 item at the top of the page and the other two items ?—I cannot see any.

The Judge : The £121,000 arises in respect of the dividends paid or deducted during the year, and the £70,000 is in respect of an over-payment in the previous

year. They are both matters which may fairly be credited during the year ?—Yes, my Lord.

Counsel: These three items amount to roughly £196,000 ?—Yes.

As against those items there is a deduction to be made. Will you explain that ?—That is an assessment which arises because certain excess profits duty repayments were made.

Then with regard to 1926, there is received £196,000 less £13,000, which makes £183,000, and that was taken into the year's profit and loss account at a figure of £175,000 ?—That is so.

So there is taken in that year, 1926, less than the total amount. The fund is higher at the end of the year than at the beginning ?—Yes.

There is no depletion of the reserve ?—No.

In your view, is the £175,000 in that year properly taken into the profit and loss account for the year ?—Yes.

How are dividends from the subsidiary companies when received or paid treated in the accounts generally ?—Those are credited in the accounts net. In the detailed accounts of the company, the income from the subsidiary companies is shown as gross. For the purposes of the statement on exhibit 21, the income from the investments is shown net, and the income tax which had been deducted from the dividends before they were received, has been shown as a charge.

The Judge: The Royal Mail Steam Packet gets its dividends less income tax ?—Yes.

Why should not that be shown in exhibit 21 ?—There is no reason at all.

What is shown here is the net amount ?—That is so.

Counsel: There is one other matter I want to question you about, and that has reference to the 1927 account of the company. In reference to the matter the Attorney-General raised yesterday with regard to the Pacific Steam Navigation Company, did you hear yesterday a suggestion that the Pacific Steam Navigation Company in 1927 had paid their dividends by £10,000 in cash and half a million White Star shares ?—Yes.

Does that transaction come at all into the 1927 accounts of the Royal Mail Steam Packet Company ?—No. It takes place in the next year, 1928.

What is the position with regard to the Pacific dividend for the other year, 1927. It does not come into the 1927 accounts of the Royal Mail ?—The dividend which was declared by the Pacific was credited in the books of the Royal Mail on June 13th, 1928.

After the 1927 accounts had been passed and everything had gone through ?—Yes.

The Judge: And was the purchase of White Star in June, 1928 ?—No, in December, 1928.

Witness was then questioned by Sir Patrick Hastings on behalf of Mr. Morland.

Have you gone through the facts and figures in this case ?—Yes.

Have you been in Court throughout the hearing of this case ?—Yes.

Did you hear some questions put to Lord Plender ?—Yes.

In your view, are the words which are used in this case, "adjustment of taxation reserves" words usually used by accountants ?—Yes.

And having regard to the facts as they have been elicited in this case, in your view were they appropriate words for Mr. Morland to have used in 1926 and 1927 ?—In my opinion they were.

Just this final question. Supposing you had been the auditor of the Royal Mail Steam Packet Company in 1926 and 1927, would you have signed these accounts as Mr. Morland did ?

The Judge: Before the witness answers that question, do you object, Mr. Pritt ?

Mr. Pritt: I would rather not.

Sir Patrick Hastings then put the question again, and witness replied "I should."

Cross-examined by Mr. Pritt, witness said that the chairman of the company sometimes looked at the accounts from a different point of view from the accountant.

With regard to the Pacific Steam Navigation transaction I don't suggest that there was anything improper done. What actually happened was that in 1926 a dividend of £60,000 in the accounts of the Royal Mail Steam Packet came into credit ?—Yes.

And that was in fact the 1925 dividend ?—Yes, in respect of 1925.

And then in 1927 the £60,000 again came in, but that was the dividend in respect of 1926 ?—Yes.

Now with regard to this exhibit 21, you will remember that Lord Kylsant has described it as grossly misleading, and you have described it as misleading ?—Yes.

Is this a document prepared by the chief accountant of the Royal Mail Steam Packet Company ?—I understand so.

Prepared in about 1923 as from 1920 and kept up to date since then, and not intended for circulation to the public ?—I understand that this was a document which the Chief Accountant kept himself for memorandum purposes.

The Judge: I don't remember Mr. Cason being challenged as to the accuracy of the document.

Mr. Pritt: It was never suggested to him that it was misleading at all.

Counsel: You drew attention to the fact that special debits shown were brought in before the surplus or deficit was calculated ?—I did not mention that as my ground of objection. I said it was an element.

The matters which you challenge are all plain for a man to see. Any accountant would see them at once ?—Anybody could see them.

The special debits at the bottom of the page would not affect the figures for 1926 or 1927 ?—No.

With regard to 1924 and generally, were the special debits and credits the things which did not bear on the current earnings in the year ?—If you mean the operating accounts of the company, then that is so.

With regard to the document you have assisted to prepare showing that if the R.M.S.P. in the years prior to 1926 and 1927 had been minded to declare larger dividends could have done so, that is from a book-keeping position ?—Yes.

Before a company declares a dividend, it considers its book-keeping position, but also its cash position ?—Yes.

The actual cash available is an important matter ?—Yes.

Have you examined the cash position at the time ?—No.

It would, in fact, be a very difficult task now ?—It would involve a very detailed examination.

You are unable to say that the company's cash position would have enabled them to pay these dividends ?—It does not mean that there must be a cash balance when a dividend is declared.

The Judge: Whatever your assets were, you might be brought down, simply for want of cash ?—Yes, it frequently happens that when a large profit has been made there is no cash to pay the dividend.

If the cash position would justify 5 per cent. and the company determined to pay 12 per cent., they would have either to borrow money or to realise some assets to produce the cash ?—That might be so if a company is earning profits year by year. They must at some time or other take the form of liquid assets if profits have been earned. They are always represented by current assets which are available for distribution.

Counsel: Dealing with the E.P.D. you told Counsel that you did not regard, in the circumstances of this case, the various sums laid aside as a reserve, but as a provision for a liability ?—That is so.

Many accountants would call it a reserve ?—Yes.

Do you know many accountants do call it a reserve ?—Yes.

And do you know that in some of the books of this company it is described as E.P.D. reserve ?—Yes.

You would never say that any of your professional colleagues were wrong when they do so describe it ?—The facts are the real thing.

As soon as it was proved that the total sums of reserve were excessive, the amount would be regarded as income for the year ?—Yes.

Anyone would say it had been earned in the year ?—In my view the reserve became income for the year when it was no longer required.

And the fact that £100,000 comes in in that way makes the company £100,000 richer than it might have been, but leaves the company's earning capacity exactly where it was ?—I don't know that I follow that question.

The earning capacity is not greater because someone has paid the £100,000 which was owing ?—No.

Replying to further questions, the witness said that after the war it was difficult to ascertain facts with regard to obsolescence allowance, and Mr. Pritt suggested that accountants were "flirting" with it.

The witness pointed out that the obsolescence allowance did not arise out of any statutory obligation, and the Judge added that he understood it was the benevolent intention of certain words in an Act of Parliament.

Mr. Pritt: Benevolence could be stimulated by argument.

Witness: One naturally does one's best. (Laughter.)

Mr. Pritt suggested that whoever included in the company's accounts the words "Adjustment of taxation reserves" was referring to the surplus of the reserves, and the witness was understood to agree.

If you were faced with the task of preparing a profit and loss account for the year ended December 31st, 1927, for the Royal Mail Steam Packet Company, and you were desirous of indicating that there had been an adjustment, you would have searched to try and find another word for "Reserves," as in your opinion they should not be called reserves ?—I should have had regard to current vocabulary. You must use a word that is understood.

You would have said "Reserves ?"—I should.

The Judge said he understood that the company actually paid over to the Treasury about £1,200,000 in direct taxation, and got back about £1,000,000. Part of the amount was dealt with by constructive repayments, and therefore did not come into any cash account.

The witness agreed that that was correct.

The Judge: The proper liability for E.P.D., as it turned out, was about £1,700,000, and they knocked off £1,400,000 for obsolescence and deferred repairs. All the Treasury eventually got was about £340,000.

Mr. Pritt asked the witness if it was correct, as suggested that all the money contributed by the company to the Government in respect of E.P.D. was £340,000, and the answer was in the affirmative. That figure included the obsolescence allowance.

The Judge: The obsolescence allowance really arises as an allowance from the E.P.D. ?

Witness: That was the convenient way of making the allowance. It was intended that an allowance should be made, and that was the more convenient way, instead of it being a new form of account.

The Judge: That was how it was done, whatever the reason.

Mr. Pritt: If you are having a reserve fund, into which payments are coming every year, and at the same time you are making payments out of that reserve fund from time to time, is it true to say that you are drawing on your reserves, even if, at the end of the year, the reservoir was fuller than it was at the beginning ?

His Lordship said he thought that was a matter for argument, and went on to say that he thought there was danger of confusion if they troubled too much about words.

In re-examination, Sir John Simon called attention to some figures relating to the year 1924, and said there were special debits which might be regarded as non-recurring items. There was, for instance, £70,000 lost on the sale of a ship and the cancellation of a contract.

The Judge remarked that it possibly would have been better to have separated the special debits and special credits in the document referred to by Counsel and then have set one off against the other, and taken the balance.

Witness: I think so, and it should all be included in one statement.

Sir John Simon: Every figure is right, but the document should not be looked at from another angle, and be misleading. He added that he had understood the witness to say that there was a distinction between income from subsidiaries and the way in which the matter was regarded when it came to pay dividends out. Supposing the Royal Mail Steam Packet Company only had one subsidiary, which declared a dividend requiring £100. After deducting income tax, the amount handed over by the subsidiary would only be £80. The Royal Mail Steam Packet Company would then consider what it should distribute to its own shareholders. He asked whether it could distribute to its shareholders the gross sum of £100, which the subsidiary had declared as a dividend, and the witness replied in the affirmative.

Because, when it declares a dividend of £100, there would be a special credit of £20 ?—Yes.

The Judge: You could distribute £100 nominally, but pay £80 and credit the company with £20 ?—That is so.

Sir John Simon: What I am calling attention to is the special credit, income tax reserve. That reserve is, as a matter of fact, to a large extent, made up on my illustration of the £20.

The witness said he might illustrate the matter in connection with the year 1924. In that year, with tax at 4s. 6d. in the £, there was a figure of £404,000 as income from investments.

The Judge: It would be £100,000 more ?—It would be £117,000 more. The figure would be £521,642. We should then have a surplus instead of a deficit.

Sir John Simon: The way this company kept its income tax reserve account was to bring a gross figure on one side, and to put the net deduction on the other side ?—Yes.

You could equally do it by keeping a record of the net amount you receive ?—Yes.

Sir John Simon next referred to the provision for E.P.D. by the company between 1915 and 1921. The total provision was £2,260,000. It turned out in the end that there was an over-provision which the witness stated amounted to £491,478.

Because of the excess profits duty, apart altogether from obsolescence, the final liability was the difference between those figures ?—Yes.

It was £1,700,000 ?—Yes.

Was part of that paid to the Revenue in cash by the company and part of it constructively paid as a set off ?—Yes.

The Judge said that in 1926 the amount had not been fixed, but about half a million was then dealt with.

Sir John Simon said the total actually paid to the Revenue for excess profits duty was £1,148,000. The amount which was constructively paid was £551,000.

The Judge: It is impossible to get the exact figures, as there were many minor adjustments, but substantially the figures are right.

Sir John Simon: That is dealing with the E.P.D. alone ?—Yes.

Let us suppose a company that never made any excess profits at all. Would it still, if it was a shipping company, have been entitled to obsolescence allowance ?—I imagine it would.

Sir John Simon: The payment by the Government of obsolescence allowance to a company would not depend upon whether they were making excess profits or not.

The Judge: No, it was all done under that section of the Act. I had forgotten.

Sir John Simon said that the shipping companies who had not paid any E.P.D. could get the obsolescence allowance. The obsolescence payments did not arise out of any payments made by a shipping company to the Government, but came under an independent head. He added that the obsolescence allowance came to £1,190,000, and the deferred repairs allowance to £238,000, or a total of £1,428,000. "In 1921, £300,000 was written off investments. In 1922 there was a credit to profit and loss account of £100,000. That made a total of £400,000, and nearly exhausted the excess provision for E.P.D. In 1923, £250,000 in cash was paid by the Government to the company, and £100,000 was taken to the profit and loss account. In 1924, £390,000 was paid by the Government to the company, and £330,000

was brought to the profit and loss account. In 1925, there was no further cash received, but the deferred repairs claims occurred, and £300,000 was taken to the profit and loss account. In 1926, £270,000 was repaid by the Government to the company for obsolescence allowance, and £550,000 was carried to the profit and loss account. In 1927, the final payment was made by the Government, the whole thing was settled, and £232,000 was brought to the profit and loss account." The witness said that was a correct statement of the position.

Sir John Simon further stated that in the first of the years to which he had just referred, there was a transfer of £400,000 to the profit and loss account, and that amount was in substance, the over-provision for E.P.D. But after that, for nearly every year, what was taken to the profit and loss account was a receipt from the Government. He asked the witness: "In your experience, do accountants in practice, in making or approving profit and loss accounts for the year, distinguish between what have been called non-recurring items and recurring items?"—The witness replied "No."

When you are dealing with an enterprise of this sort, with all the subsidiaries and ramifications, and in the light of your examination of the books of this company, do what are called exceptional items occur seldom or frequently?—They occur frequently.

There is the sale of a ship, declaration of a bonus, and such things. Exceptional items in a great enterprise of this sort cease really to the exceptional?—That is so.

In your opinion, after investigating the accounts very closely, is there anything misleading in not labelling non-recurring items and not disclosing them?—No.

The Attorney-General at an early stage of the case, said "If you take the year 1921 and two and a quarter millions as being the sum total of the taxation reserves, do you find that at the end of the year 1927 the sum total is £329,000." If that statement is intended to mean a drawing of the two and a quarter millions to feed profit and loss accounts, is that what the accounts show?—No.

The Judge: The company paid over to the Government £1,100,000, and they kept £1,000,000 in reserve. That would not be earmarked, I suppose. They never paid that million over at all, but they kept it. The other million they paid over. They got back in repayments from the Government about £1,000,000. They got in actual repayments from the Government about £1,000,000, and in constructive repayments, about another £600,600. They really got more than they actually paid over, except that the constructive repayments were to represent something which they ought to have paid over and did not pay over. What happened to the one million which they kept in their books originally? They put to the E.P.D. account £2,260,000, and they got back in cash about £1,000,000. Therefore that leaves about another million unaccounted for. We know that £400,000 of that they dealt with in 1921 and 1922—there was a sum of £300,000 written off, and £100,000 to profit and loss account. What about the other £600,000, was that dealt with in the constructive repayments?

The witness replied that the figure of £2,260,000 was the original provision and it was not an actual liability.

The Judge: I was only wondering how it was dealt with in the accounts.

Sir John Simon: Was not duty paid and the liability discharged?

Witness: The liability for the total E.P.D. was discharged, and £400,000 went through the books as a debit on the E.P.D. against the item on the credit side of £2,260,000.

The Judge: Would the £600,000, which makes the difference, be the subject of the constructive settlement?

Witness: I do not think so.

Sir John Simon: You say that the original provision for E.P.D. turned out to be larger than was necessary?—Yes.

But the rest of it, I apprehend, was used in paying duty?—Yes.

The Judge: I was wondering, as a matter of book-keeping, how it was dealt with.

Witness: Payments that are made to the Revenue of £1,110,000, would be debited to the E.P.D. account, as also would be the £551,000 constructively repaid.

The Judge: That is what I was trying to suggest. I was trying to make the figures fit in.

Sir John Simon referred to the first hearing of the case, when the Attorney-General, speaking of the year 1926, said "You only get that balance by bringing into the year £750,000, which in no way ought to appear here at all." He asked the witness, as an accountant, whether he regarded the £750,000 as money which ought not to appear in 1926, and he replied "No."

The War contingency reserve; what was that, and when was it made?—There was a provision made in 1915 and subsequent years by the company, because it was anticipated that certain of the company's officers who were serving in the Navy would eventually claim on the company for the difference between their naval pay and the pay which would be made by the company.

The Judge: And then it was found it was not necessary?—Yes.

Sir John Simon: What was the year in which it was ascertained that the Government was going to foot the whole bill?—In the year 1922.

On being discovered in 1922, that it was not really needed to set aside the money, from an accountant's point of view, does it become then available for distribution?—Yes.

When it was set aside, it would be out of undistributed profits?—Oh, yes.

All these special items are undistributed profits?—Yes.

Until they are distributed?—Yes.

With regard to the special depreciation or compensation fund of £440,000, what was that?—It arose really under three headings. The first heading was in 1919, when about £1,000,000 was received from the Government, as underwriters in respect of ships which were lost by the company. The second heading was a provision made out of profits in 1917, for special repair work, which was to be carried out later.

What was the amount of that?—£218,000. And then, in 1919 and 1920, there was a profit on the sale of ships of £387,000. That made a total of about £1,600,000, and that was disposed of in 1920, first of all by writing down the ships by £1,152,000.

Is that the £1,152,000 which has been referred to, as being a depreciation over and above the regular 5 per cent.?—That is so.

That may be taken to be substantially the first item of £1,000,000 received in respect of ships lost. In 1922 the provision for special repair work was no longer required, as it had, on the whole, been carried out and charged substantially against voyage accounts.

Paid for out of trading receipts in the voyages?—Yes, and the profits on the sale of ships again was an item of income of the company, and the total amount credited to the profit and loss account was the balance of that amount, making £444,000.

That is the amount which you find in 1922?—Yes.

And as it was the year in which it was ascertained, it was the year in which it was available for distribution?—Yes.

When the case was opened, the impression seemed to exist that these sums were reserves built up during the war. I gather that £1,000,000 comes from the Government after the war is over?—Yes.

And another £400,000 from the sale of ships in 1920?—Yes.

Would it be your view that this was a sum which was built up during the war?—No.

The witness's evidence was concluded, and addressing the Judge, Sir John Simon said that Sir Patrick Hastings was calling other accountants, to give evidence. It was thought convenient not to duplicate any evidence. Under the circumstances, no further evidence would be called on behalf of Lord Kylsant.

SIR PATRICK HASTINGS' ADDRESS.

Sir Patrick Hastings then addressed the jury on behalf of Mr. Morland. He pointed out that the case had lasted for some days, and that was the first time that any Counsel representing Mr. Morland had had any opportunity of saying a single word on behalf of that gentleman. It was right, in a case of that sort, that one should speak without heat. They should speak calmly. He trusted, if he did not address the jury for hours, and because he had not thought it right to trouble them with any further investigation into exhibits or other matters, that they would realise that that was not because he was not anxious to put before them at the earliest possible moment the matters on which he now proposed to speak. It had been rightly said that it was bad advocacy to put one's case too high. There were, however, no heights to which he could put his case which could be too high. In the whole of the proceedings up to that point he had only asked about a half a dozen questions. The jury might not have seen the relevancy of that. The questions he had put to witnesses, however, were vital. Those questions led to the answers which he knew must be given. They were answers which put Mr. Morland back into the position in the eyes of all who read them that he enjoyed before May of the present year. Mr. Morland's defence was not concerned with the examination of any document except the one in respect of which he was charged. Counsel desired the jury to consider with him the position of his client, who was now sitting in a place intended for thieves, cheats, people who robbed their fellow citizens out of their money or their goods. He was going to ask the jury to consider whether Mr. Morland was a man who was properly in the dock.

"I want to tell you," proceeded Sir Patrick Hastings, "who my client is. Until May of this year Mr. Harold John Morland occupied a position in the world of which any man might have been proud. There is no man in the City of London who occupied a higher or more responsible position than he did. He was a member of a firm of Chartered Accountants—Messrs. Price, Waterhouse & Co.—a firm, I suppose, whose name and reputation are known wherever the English language is spoken. Mr. Morland was a partner, an honoured partner, and a respected partner in that firm, and was honoured and respected by every professional man in the City who knew him. For many years he had been the nominal auditor of the Royal Mail Steam Packet Company, and I use the word "nominal" for a reason. You appreciate, by this time, that it was Messrs. Price, Waterhouse & Co., whose clerks audited the books of this company. It was the habit, and I think the requirement of the Royal Mail Steamship Company, that an individual should appear as auditor. The clerks were not the clerks of Mr. Morland, but the clerks of Messrs. Price, Waterhouse & Co.

"Mr. Morland for years audited this series of accounts. The Royal Mail meant no more to Messrs. Price, Waterhouse & Co. than hundreds of thousands of other big companies and banks. The accounts of those other companies and banks are audited in exactly the same way by exactly the same firm. Some question was raised about the remuneration the firm received. It was a fee of four hundred guineas a year. If it interests you to know what money as a partner Mr. Morland received from the audit of the books of the Royal Mail Steamship Company, you can be told. It is something in the neighbourhood of £20 per year. That is all. When you see a man standing in the dock, you cannot help asking yourself the reason. You cannot help asking yourself what he has tried to get for himself. Men do not stand in the dock who have no interest one way or another in the events which are supposed to have been the basis of their crime. You will ask yourselves, no doubt, 'Did Mr. Morland own a share in the Royal Mail Steam Packet Company; did he ever buy a share, and did he ever sell a share. Did it matter to him personally whether they made a million in a year or not.' It mattered not at all. His only and his sole interest in this case in the last twenty years has been to do his duty as an auditor. What was it? In a sentence I will tell you what it was. Every year the accounts of the Royal Mail Steam Packet Company were prepared by the Accountants' Department of the Royal Mail Company. The accuracy of the figures was checked by the clerks from Messrs. Price, Waterhouse & Co., and then, when they were finished, and everything was done, they went to the Board of the Royal Mail Company."

"We are not living, even to-day, in the world of 'Alice in Wonderland.' I decline even to consider the proposition that the Board of the Royal Mail Steam Packet Company do not know what was the financial position of this company, from year to year. Look at the names of the members of the Board. I care nothing for the fact that they are names which are everywhere known as those of honest men. Amongst them is the name of a man who, if things had been a little different, might have been standing here in this row, where we (Counsel) are. He is one of the greatest commercial lawyers practising to-day. Is anyone going to tell me that that gentleman was unaware of the financial position of the Royal Mail? I care not, whether it be so or not. Mr. Morland was the auditor. You must know that every auditor looks to see who his Board is. If it consists of people of poor reputation, suspicion might be present in his mind. Is anyone going to tell me in this Court that Mr. Morland must have thought that members of the Board of the company did not know, month by month, and year by year, the exact position financially of this company?"

Counsel went on to state that the accounts were prepared by the officials of the Royal Mail Steam Packet Company, and then went before the members of the Board to be examined. Those accounts never came before Mr. Morland until they had been placed before the Court of Directors of the company. It was suggested in that case, in the wording of the summons and the indictment, that Mr. Morland in some way aided and abetted Lord Kylsant to do something. The members of the jury would hear that never once in all the years did Mr. Morland ever speak to Lord Kylsant about the accounts. Mr. Morland was no more guided by another person's view than he would be by the view of the office boy. The accounts, as he believed and knew, were those of the directors of the Royal Mail Company, and they were sent to him.

There was an exhibit in the case which was numbered "21," and it would probably hang over the brains of the jury for 21 years. Mr. Morland knew who the directors of the Royal Mail were. He thought at the time, and still believed that they acted properly, and his views in that direction would be confirmed by the highest authorities in the land. Those authorities would say that they acted properly. Those authorities would tell the jury that the right and proper wording was used and that amounts were rightly and properly utilised to pay dividends. Year after year Mr. Morland's duty was to take in his hand a printed document and see whether the balances were right, whether the assets were right, the liabilities right, and whether the sums transferred in the year were sums which could be properly transferred and were sums out of which dividends could properly be paid. That went on until the year 1925. In 1925 Mr. Morland did a thing which apparently to most auditors was even in excess of the strict requirements of his duty. Mr. Morland was even more punctilious than some seemed to think was necessary. He came to the view, and many auditors would not have done so, that a time had arrived when he ought to give to the company and its shareholders an indication that amounts were being drawn upon or utilised for the purpose of paying the dividend. He never consulted a soul, or asked Lord Kylsant to choose the form of the words. The jury would remember that something was said about the use of the words and the selection of the phrase. The words utilised "Adjustment of taxation reserves" were words which Counsel might almost say were hallowed by usage. When Lord Plender was in the box, he (Sir Patrick Hastings) had bundles of profit and loss accounts, which had been audited by practically every firm of accountants, and, if necessary, the jury could examine them, "and find in every one

the expression in slightly different form 'Adjustment of taxation reserves.'

Sir Patrick Hastings pointed out the Crown had to prove the case against the defendants. When Lord Plender was in the witness-box, he asked "Is the expression 'Adjustment of taxation reserves' an expression commonly used by auditors," and the answer was "Yes." He also asked what the expression was used to indicate by accountants, and the reply was that it was used to indicate that there had been transfers from reserve. In other words, the expression was, not uncommonly used, but commonly used by accountants to indicate the very thing that had happened in that case. He also asked whether the words applied to cases where the transfers or allocations were small or very large. Lord Plender's answer was that the words might be applied, whether the transfers were large or small. "I said to Lord Plender," proceeded Counsel, "Will you take in your hands this balance sheet? What would you understand by the phrase 'Including dividends on allied and other companies and adjustment of taxation reserves?' He said, 'I should understand that in order to arrive at this figure there were transfers from reserves, which might be large, or might be small.' They gave to the shareholders every opportunity, if they desired to know, and if they thought that they no longer trusted their Board, the opportunity of asking, if they did not know. Those are the very words Mr. Morland chose, without any suggestion or conference with Lord Kylsant, or any of the directors. Mr. Morland took upon himself the responsibility of taking accounts which had been passed by, amongst other people, a gentleman who was implicitly trusted by every member of the Bar. Mr. Morland said he wanted the additional words put in. He thought it was right that they should go in, and they went in. That was why he was in the dock. There was nothing else at all. There was no further charge against Mr. Morland. Counsel remarked that he had done his best to listen, and had had enough time, to try and ascertain if there was anything else against Mr. Morland.

In 1927 there came a time when Lord Plender was asked to inquire into the affairs of the company for a purpose quite unconnected with anything being considered in that Court. A matter which he, personally, would never cease to regret was that Lord Plender did not investigate matters for himself. He had not the time, and another gentleman was called in to make the inquiries. There were great men in all professions. Some of those at the Bar might occasionally have to inquire into the affairs of one of their brethren. There might be reasons for secrecy, and if there was anything that required explanation they might go to the man concerned. One of two things had happened in that case, and he hoped the jury would be as charitable as he was. One view was, Sir William McLintock in looking into matters and making a report, saw nothing which even required an explanation. In that case it was only right and proper he should ask Mr. Morland nothing. Counsel could not believe there was another alternative. He could not believe Sir William McLintock ever thought Mr. Morland had committed even a slight error. He did not say so. If he did think so, and did not ask Mr. Morland's explanation, he must have had many sleepless nights, since the day the summons in the case was issued. Mr. Morland knew nothing until May 13th, when a criminal summons was served. Previously he had not heard a word which suggested he had done anything wrong. He had to appear at the Guildhall to answer a crime, a charge under the Larceny Act. A letter was written to the Director of Public Prosecutions. He was not complaining, but the reply was that Mr. Morland would have to wait to hear the facts until the case was opened against him by the Crown.

If a member of the Bar found himself in some trouble, he had always a gentleman who, during his term of office, was the head of the profession. Men who were in trouble could go to the Attorney-General, and ask for guidance and help. He understood that in Mr. Morland's profession, there were two courses open to a man. He could either go to the President of the Institute of Chartered Accountants, or the President of the Society of Incorporated Accountants. Those two gentlemen were the heads of their profession, chosen not because they were better than anyone else, but were selected just as Lord Plender was for many years. Mr. Morland went to both the head of the Institute of Chartered Accountants, and of the Society of Incorporated Accountants. Those two gentlemen were respectively Mr. Hill and Mr. Morgan. It would be impossible to pay a high enough tribute to Mr. Morgan for the hours that he had taken in trying his best to see the rights and wrongs of that case. Both those gentlemen would go into the witness-box. They were the heads of the profession, and were giving evidence in what they considered to be the interests of justice and fair play, and would state that Mr. Morland had done nothing wrong so far as they knew. Those gentlemen could do no more.

During that case the jury had heard a great deal of repetition. Counsel remarked that he was afraid he would be guilty of the same offence. He was going to do a thing which he imagined had never been done before. He would call the two witnesses for the defence to prove exactly the evidence which the prosecution had proved. Those gentlemen would say exactly the same as Lord Plender had stated. He would ask Mr. Morgan and others whether they would have signed the balance sheet in 1927, and the jury would hear that they would have done the same as Mr. Morland. If it was necessary to prosecute men like Mr. Morland, then a very large building would have to be obtained to try accountants. The accountants he proposed to call would have signed the accounts of the company in 1926 and 1927. No defence was put forward, until the case reached the Central Criminal Court. Counsel in the case wanted to hear what was being said against the defendants. The jury naturally wanted to see what offence Mr. Morland had been guilty of, and Lord Plender had been called, who said in terms that Mr. Morland had done nothing wrong. Sir William McLintock knew the case from A to Z, and if there was anything in the facts of the case which made Lord Plender's observation inapplicable to Mr. Morland, that witness could have been examined. No question on that matter was, however, addressed to him. Other accountants were also called by the Crown, and not one of them had ever said a single word criticising in any way the conduct of Mr. Morland.

The previous day the Attorney-General had referred to the quotation of the shares of the company, following the issue of the balance sheets in question, and had asked if a panic would have been caused if the facts had been known. It was also pointed out that in 1928 the phrase on the balance sheet was altered to "After crediting income tax reserves not required." The phrase was altered because at that time there was nothing but income tax, and it was impossible to find a clearer word that could be used. Although there was that alteration in the accounts in 1928, there was no panic. The price of the shares, before and after the publication of the balance sheet in 1928 remained steady over the period from 69 to 69¼. In other words, the right words were used in 1928, and there was no panic.

The Royal Mail Steam Packet Company had suffered as every company in the world had suffered, not from bad management, but from the depression existing throughout the world. If Mr. Morland had done what had been suggested, he could have ruined every member of the company in 1921. If he had said to them in the year 1921 that the position of the company was magnificent, and that it had endless reserves of millions of pounds, but that it was living on its "fat," what would have been the result? The biggest shipping company in the world would have been ruined. Was the Attorney-General saying that the duty of Messrs. Price, Waterhouse & Co., people who knew their duty, was to go in the face of a distinguished and learned board of directors, and say their duty was simply to ignore them, and do something which would wreck the company? If such an attitude was followed, the great joint stock companies of this country would be no more. They all knew the tendencies

of English finance. They knew that the big joint stock banks, all rightly, had large secret reserves. In a year a dividend of 18 per cent. or 19 per cent. might be paid, but there might be a time when there was a big financial disaster in the City, such as took place not very many years ago, when the gentleman who was responsible for it stood where Mr. Morland was now standing. Some of the banks lost very heavily. Supposing the auditor had said, "Don't put that right out of your reserves, but go to the shareholders of this big joint stock bank and say you have lost a million pounds." Did the jury think that would have been a good thing for the credit of this country? Was it to be imagined that any auditor in the world could do anything like that?

Mr. Morland would say that if he were now back in 1927, he would act as he acted at that time. That the words used in connection with the balance sheet were understood, Counsel proved by quoting from the *Statist* in May, 1928. That paper said "Evidently the accounts for the past two years, 1926 and 1927, include certain undisclosed taxation credits." That was what the balance sheet said, and what it was meant to convey. "I am going to appeal to the Law Officer of the Crown," said Sir Patrick Hastings, "to consider even now whether it is right for another hour that Mr. Morland should be allowed to continue in the dock. At any moment you (the jury) have it in your power to say that there is no case against him. At any moment if you think fit, you can say that. For a man to be acquitted is a great thing. For a man not to have to go to the end of the trial is a thing he will remember with gratitude to the end of his life. What you have to consider is the evidence, and whether it is right that he should remain any longer in the dock. Crime ought to be punished; carelessness might in another Court be the subject of condemnation. But neither the one nor the other in this case is even indicated. When you have heard Mr. Morland's view, and, if you think fit, the other gentlemen I am going to call, you will say that there has never been one word of complaint which would be urged against Mr. Morland's honesty, capability and business integrity."

MR. H. J. MORLAND.

Mr. Harold John Morland then went into the witness box to give evidence, and affirmed as a Quaker. He was examined by Sir Patrick Hastings, and said he was a Fellow of the Institute of Chartered Accountants, and had been a partner in the firm of Messrs. Price, Waterhouse and Co. since 1907. He had a Cambridge University Degree, and was a Wrangler there in 1898. He was appointed auditor of the Royal Mail Company about May, 1919, and audited the 1918 and later accounts. Although he was the auditor and signed the accounts, the clerks who assisted him were employees of Messrs. Price, Waterhouse. The three or four hundred guineas went to the firm in the ordinary course, and he received his share as a partner. It worked out at about £20 a year after he had paid taxation.

Sir Patrick Hastings: Did you ever have any discussion with your co-defendant, Lord Kylsant, upon any of these accounts?—No.

We have heard about the way in which they were prepared in the office, and were then placed before the Board, and then come to you afterwards?—That was so.

Whatever the facts may be, did it ever enter into your mind that that Board of Directors was not as fully conversant with the financial position of the Royal Mail as was Lord Kylsant?—I did not know anything about the position of the other members of the Board.

Did it ever occur to you, or did anyone ever suggest to you, that Lord Kylsant was the only person who knew the facts?—Oh, no.

Up to the year 1925, in your opinion were the matters which were brought into the profit and loss account matters proper to be brought in?—Yes.

So far as the subsidiary companies were concerned, of course, they had their own auditors?—Yes.

And the accounts came to you after audit by the other auditors?—Yes.

Did you yourself require to be inserted in the profit and loss account for the year 1925, the words "adjustment of taxation reserves"?—The words were suggested by me.

Why did you select that phrase?—I thought it was the best phrase to use; it was a phrase in common use, and to my mind it expressed exactly what I wanted to express.

Had you any sinister motive at all in selecting that phrase?—I selected it simply because I thought it gave the information that ought to be given.

In the years 1926 and 1927, did you use precisely the same phrase?—The same words. The words were in when the accounts came to me for audit, because they had been copied from the accounts of the year before.

And in respect of those two years, in your opinion at that time and now, were the proper matters brought into the profit and loss account?—Yes.

Did you at any time consider that you were guilty of any lack of duty in certifying those accounts?—No.

Do you know now in what respect you have acted improperly, if you have?—I have not really heard any suggestion to that effect.

We know that Sir William McLintock, at a later stage, was asked to investigate the accounts. Did he ever ask you for any information, or make any inquiry of you as to what you did?—He never came to me. His clerks and mine were in communication with regard to some figures.

Did they give him any information he required?—Yes, we put all our papers at his disposal.

Did he ask you for information or suggest that anything you had done was improper?—I never met him until I saw him at the Guildhall.

Do you know what it is suggested you have done wrong?—I do not; I have been very much puzzled.

Did you ever have any intention to deceive any living soul?—None whatever.

It was suggested by Mr. Cason that at some time he told you that he did not much like one of the items about the bonus, and he said that he thought he understood you to say that neither did you. Did you ever make such a statement to Mr. Cason?—I can remember the interview very well, but, of course, after three and a half years one does not remember exactly the give and take of words. He came to me—whether on his own behalf or because someone had queried it I do not know—to ask if the two bonus dividends for Nelsons were really dividends or whether there was anything in the name "bonus" which rendered them improper to be included in the profit and loss account. I told him that they were quite proper to be included.

Did you ever have any reason to dislike it?—Not the least.

Have you now?—No.

Have you ever at any time had any shareholding or any interest in the Royal Mail?—No, I have not.

The Attorney-General, commencing his cross-examination, said it was right that he should accentuate at the very outset certain facts which were in Mr. Morland's favour. He asked:

It is a fact, is it not, that you had no financial interest as to whether a dividend of 5 per cent. or any other dividend was declared?—No.

So far as the subsidiaries are concerned, you would have no knowledge of them?—None beyond what was in the published accounts, *i.e.*, the audited accounts which came to me.

I understand that what happens is that the accounts are prepared before the auditor gets there, and that the document is then put before the auditor and he is asked to audit and approve it?—Yes, that applies to companies of this size. There is a little variation in practice.

So far as this company is concerned, at any rate, this is right—the first step is the preparation of the accounts, and with that you are not concerned?—That is an internal matter.

Then the second step is that these accounts, having been prepared, are put before you as auditor?—Yes, after they have been to the Board in this case.

The Attorney-General then referred to the difference of opinion or misunderstanding which appeared to have arisen as to what the accounts had to show, and in this connection he referred to the terms of the company's charter. He quoted a paragraph which stated that previously to every yearly general meeting an account shall be prepared by the Court of Directors of the debts and assets of the said corporation, with an account of the profits made in the year ending December 31st preceding such general meeting. The paragraph also stated that the accounts shall be signed by at least one of the auditors of the said corporation, and shall be laid before such meeting to be approved. It had been suggested, continued the Attorney-General, that this provision relating to audit was superseded by a later one, but what he suggested was that there was nothing in the later provision which altered the requirement that the Directors had to prepare a true and accurate account of the assets and liabilities and an account of profits made in the year. It simply dealt with what the auditor had to do.

Mr. Morland said that it was a matter of construction. The words exactly followed the form of words in the Companies Act, and he had interpreted his duties as auditor just as though the company had been one under the Companies Act.

The Attorney-General: We have been told, both by Mr. Cason and Lord Kylsant, that in the course of the year 1926, when a deficiency was probable, an estimate was made and Lord Kylsant told Mr. Cason to ascertain what reserves they had to meet deficiencies?—I heard that.

You knew nothing about that at the time?—Nothing whatever.

You did not know that they had started out with the set idea of utilising reserves to meet deficiencies?—Oh, no.

Neither, I presume, did you know that in the year 1926—one of the years in which the £200,000 Nelson bonus which had been suggested did not for some reason materialise—the E.P.D. portion which was going to be taken moved up from £300,000 to £550,000?—It was £550,000 when it came to me.

You knew nothing about that being moved up by the £200,000?—No.

There is every difference in the world between the attitude of mind of a man who looks at the reserves with the single purpose of ascertaining whether they are suited to the contingency, and that of the man who says, "I am going to have enough to meet a deficiency"?—Of course, if you have a deficiency, and you have reserves, you naturally put them together. It would be dishonest to keep them apart.

There was some disagreement by Mr. Morland as to the use of the word "deficiency." The Attorney-General put his question in another way, and, after admitting that perhaps he had used the word rather loosely, he asked: There is first the attitude of a man who is going to pay a dividend of X per cent., and who says that he is going to find, somewhere or other, enough to pay it. The other attitude is that of the man who says that he goes through his reserves each year in order to ascertain whether they are sufficient, or too small or too great, to meet a deficiency if it occurs. So far as you were concerned, you never knew anything about the first whatever?—No.

You would not concern yourself with the effect which the company's reports are having on the public mind?—That has nothing to do with the auditor.

Questions were then asked with regard to the year 1929, when Sir William McLintock was asked at the joint request of Lord Plender and the Treasury, to make a report on the affairs of the company. Mr. Morland agreed that there were some guarantees which the company were asking the Treasury to extend.

The Attorney-General: The Treasury were under no sort of obligation to extend them unless they wanted to?—No.

If the Treasury did not extend them, the company was in this difficulty, was it not, that it could not find the money to pay them?—I cannot say that; I do not really know that. It certainly was not convenient; the company was asking for an extension.

It was much worse than that, was it not; the company was unable to pay its debt?—It is awfully hard to say that. I am not prepared to say it off hand. The company has very large ramifications, and what it was prepared to pay I do not know.

Do you know any source from which it could pay its debts?—I do not think I could give any other answer; I do not really know.

A question was asked by the Judge as to who were the auditors, and Mr. Morland said he had audited the accounts for 1928, but that when the report was put forward he had formally resigned, and his firm was appointed auditors. It was only a change in form.

Having secured agreement from Mr. Morland that Messrs. Price, Waterhouse & Co. had sent accounts to the Treasury relating to the R.M.S.P. Company, when Sir William McLintock had been asked to make a report, the Attorney-General asked:—

All I want to get from you is that the accounts at any rate show that the R.M.S.P. Company, in the year 1929, was in a serious financial position?—The seriousness of the position was that it had these large capital liabilities which were becoming due. That is clear.

In the year 1929, the R.M.S.P. Company was in a serious financial position?—It depends upon what you mean by "serious financial position."

I mean that it was unable to pay its debts?—It asked for an extension of these guarantees.

And without an extension it was unable to pay its debts?—I expect that was true; I cannot vouch for it.

Even if that is true, you audited the accounts for the year 1928. There was nothing of a very exceptional nature in the year 1928, was there?—No.

Had the company heavy liabilities falling due, and no liquid assets?—It is not exactly a case of liquid assets.

Well, assets which it could readily liquify?—I should say that the mistake was in borrowing money on such a short term.

I think it was a five year loan?—Yes; it was, I suppose, rather too optimistic to think that it would have the money at that time.

That being the position in 1929, there having been nothing exceptional in 1928, may I take it that the position was one which, at any rate, ought to have given rise to some misgiving in the year 1927?—I do not think that would follow.

Did I understand you to say that you thought that what would be required at that time would be a certificate of profits, for use in the prospectus?—Perhaps I was too hasty in thinking so, but it is what I did say.

You thought that you would be asked to certify the various profit and loss accounts, and, in regard to the year 1927, that you would be asked to certify £737,000?—It never got as far as that; I do not think that was in my mind. I thought that I might be asked to state year by year what were the earnings and profits, after making the necessary adjustment that accountants think it well to make.

What is the figure that I may take for 1927?—There is a figure of £737,000 in the balance sheet, but it does not follow that it will be the same.

What I suggest is that you never would have certified that figure of £737,000?—It is very unlikely that it would have come out at that figure.

The Attorney-General was proceeding to ask the witness what he would have done with certain figures in the 1926 accounts if he had been asked to certify a statement for use in a prospectus, when Sir John Simon intervened, and questioned its relevance, but the Judge said that the question might be material.

The Attorney-General: If you had been asked to certify, for use in a prospectus, what the figures for the 1926 profit and loss account were, you would have been very anxious to avoid misleading the investor, would you not?—Oh, yes.

First of all, you would have altered the build-up of it, would you not?—I think so. We nearly always say that the profits given in a prospectus are the profits after making adjustments, whether large or small.

Would you mind telling me, as an illustration, what you would have done with the figure of £550,000 (the amount received back from the Government in respect of E.P.D.)?—If I were being asked to certify the profits that the company earned in the year, it could not have been included.

The Judge: In that year?—In that year, my Lord.

The Attorney-General: What would you have done with the £175,000 income tax reserve?—Nearly every certificate for a prospectus leaves out of account taxation altogether.

Then that would not have come in?—No.

Then there is the figure of £232,000?—The same consideration would apply.

Then there is the item of profits on steamers and premises sold, £108,000 odd?—I do not think that would have been in either.

What about Corporations Profits Tax?—The same remark applies as to the other taxation.

Would that have been for the purpose of preventing a member of the investing public being misled?—I should say to give him the information necessary to enable him to form an opinion.

To present to the prospective investor a true picture?—

If it is necessary, Mr. Morland, to present a true picture to a prospective investor, why is it not necessary to present a true picture to the shareholder?—Because the circumstances are quite different. What a shareholder wants to know is, what his company has done during that year.

I quite agree.—And that includes all these items which have been properly brought in.

Now, forget for a moment, the higher accountancy, and higher mathematics in which you indulged in the days when you were a Wrangler.—I cannot forget that you are charging me with a crime.

I was trying to put something in order to bring out a point in your favour.—That is very kind of you. Thank you.

It may be, from the knowledge you have of accounts, and the knowledge which you have or have had of higher mathematics, that some things would convey to your mind quite a different impression from that which they would convey to the mind of an ordinary member of the public?—You cannot exclude that possibility.

Do you think, Mr. Morland, that when an ordinary intelligent member of the public or shareholder, but one who was not a specialist, looked carefully through the accounts for 1926 and 1927 he would have a true picture of the company's position?—The balance sheet gave him a perfectly true picture of the company's position.

What about the profit and loss account?—Yes, that also, but the balance sheet is what the shareholder relies upon to ascertain the financial position of the company at any date.

It is very important for a shareholder to know, amongst other things, what current earnings his company is making?—I do not see why.

Shall I tell you why?—Yes, please.

After all, the value of assets lies in the fact that they have an earning capacity?—I agree.

You may have your ships standing in your books at hundreds of millions, but unless they can bring in a profit, their value as assets is not much, is it?—That is perfectly true.

And therefore, in order to appreciate the position and form any view at all upon the value of assets, one needs some idea of the earning capacity?—Well, it is quite certain that neither of these profit and loss accounts will tell the shareholders that. I can say that at once.

Do you not think now, in the light of after events, that those profit and loss accounts would leave the ordinary intelligent shareholder under the impression that so far as earning capacity was concerned, all was well?—No, I do not think that necessarily. I think anybody who read the accounts would see that there was no statement whatever about earnings.

Do you agree that one of the most material circumstances which every shareholder has a right to know is the earning capacity of the company?—Of course, I do not agree with that.

In reply to a further question, Mr. Morland said that the profit and loss account was a sort of appendix to the balance sheet, dealing with one particular item in the balance sheet. The profit and loss account must, of course, be true and correct, but the form of it was entirely within the discretion of the directors.

The Attorney-General asked Mr. Morland if he would agree that there came a time—perhaps it was a matter of degree—when, if this was to be done the shareholders must have notice.

Mr. Morland replied that each balance sheet came to be audited as a separate thing. It was not really in that sense one of a series. The main thing an auditor had to do was to see that the balance sheet which he was auditing was true and correct at that particular time.

Sir William Jowitt: With regard to the utilisation of secret reserves to level out inequalities. If it has been done over a series of years, if substantial amounts have been used, and if it is going to be continued, the auditor ought to insist, should he not, that a clear indication is given to the shareholders.

Mr. Morland: Are you putting an imaginary case?

I am putting a proposition—I should say in general that if there is a large reserve which has not been put aside for any particular purpose it ought to be disclosed from the first. It is of the same nature as transfers to general reserve. It ought to be put to general reserve.

If it has been put aside for a contingency, and the contingency has not arisen, I put it that a time comes when, if you are going to use it, you must say you are going to use it. Do you dispute that?—I find it a little difficult to follow.

Mr. Morland, amplifying his answer, suggested that he might put the matter this way. Supposing a company had £1,000,000, and took £100,000 from it one year, the same amount in the next two years, and then in the fourth year took £500,000, was it the Attorney-General's suggestion that the fact ought then to be mentioned?

"Precisely," replied Sir William.

"Well, you are putting a very difficult question," said Mr. Morland, "because an accountant does not consider questions of policy. He considers whether each statement is a true and accurate statement?"

What I am putting to you is that as a question of degree there does come a time, does there not, if you are going to utilise reserves in a profit and loss account, you must say so?—It is a question of degree. I am not sure how much it is time and how much it is size.

Coming down to the facts of this case. In your view had that time arrived when in the year 1926 you made your report in respect of the year 1925? I select this year because this is a time you put in the words "Adjustment of taxation reserves?"—I do not think what was in my mind was that any time had arrived, but here were large amounts coming year after year, and it was time they should be described.

You thought it was right that the shareholders should be told in respect of this year that these reserves were being utilised?—Yes.

Mr. Justice Wright remarked that if he had understood the witness aright, he had said that at this time shareholders ought to be told that large sums were being utilised outside the current incoming of the concern.

"I think, my Lord," said Mr. Morland, "that my answer applied to the Excess Profits Duty."

Mr. Justice Wright: Why should the shareholders be told?

Mr. Morland: My idea in putting in those words was this. In that statement which begins "Balance for the year," you have two large amounts mentioned—dividends from allied and other companies, and on the other side

depreciation. In the second year you had large sums coming in from another source, not non-recurrent, but recurrent, which were quite as important to the company as amounts which were coming in from allied and other companies. If you have got three things of practically equal importance, it seems not a very good method to mention only two of them and leave out the third.

The Attorney-General suggested that the sums to which Mr. Morland referred were recurring with this qualification, that the time over which they could recur was strictly limited.

Mr. Morland said that non-recurring was not a very good word for a thing that occured seven years running.

The Attorney-General asked if he would agree to the use of the term abnormality in this connection. Mr. Morland assented.

Mr. Justice Wright: It is an abnormal thing which the shareholders ought to know if they are to obtain a true and correct picture of the state of affairs.

The Attorney-General (to the witness): Did you think that it was necessary to indicate the existence of these sources in order to prevent the accounts presenting a false and inaccurate view of the state of affairs?

Mr. Morland: I thought it was desirable, and I made the suggestion. The suggestion was at once accepted, and the words were put in. I was never brought to the point of considering whether it was necessary.

Let me bring you to the point. Take the years 1925, 1926, and 1927. Supposing those words had not been included, do you think that the accounts would have represented a true and accurate view of the state of the company's affairs?—I though it was desirable to include them, and having thought it was desirable, and having got them included, I never had to consider.

Mr. Justice Wright: Mr. Morland, you have a sort of judicial duty here. You have to certify as auditor, and on you depends the certification of accounts.

Mr. Morland: You put it high, my Lord, calling it a judicial duty.

Mr. Justice Wright: Well, I will say quasi-judicial.

Mr. Morland: Yes, my Lord.

The Attorney-General: And you are not the servant of the directors?

Mr. Morland: No.

Part of your duty is to see that the shareholders are to be protected?—Oh, quite.

Mr. Justice Wright: You are not infallible, but you have that duty?

Mr. Morland: Certainly.

The Attorney-General: Supposing in the accounts for the years 1925, 1926 and 1927 the words "Adjustment of taxation reserves" had not been there, would those accounts, in your view, have represented a true and accurate view of the company's affairs?—I don't think I can put it higher than this. I think it was very desirable. I don't make suggestions lightly in the course of audit, and I don't ever remember a suggestion that I have made not having been accepted. I made that suggestion because I thought it was very desirable that those words should go in. I don't think I can go further.

You would have been very reluctant to have signed those accounts without those words?—Having made the suggestion, yes.

The Attorney-General said that in regard to this matter, he had used the expression "Danger signal."

Mr. Morland said that was not an auditor's expression.

The Attorney-General asked if Mr. Morland had intended the words to be a danger signal.

"No," replied Mr. Morland, "I intended them to be a fuller description. I don't think it is the same thing."

Mr. Justice Wright: In 1924 the words were not there. Might not the words of 1924 appear to be rather misleading?

Mr. Morland: I think, looking back, if I may say so quite frankly, I am rather sorry I did not make the suggestion in 1924, because the amount brought in in 1924 was larger than in 1925.

The Attorney-General: If it is necessary or very desirable to put in some words—and in your view you say it was very desirable—do you not think it was desirable to use words which would not only convey something to the mind of the highly-skilled professional accountant, but would convey something definite to the mind of the ordinary shareholder?—I should try to chose words which would convey the meaning intended to be conveyed.

Mr. Justice Wright: There are two points of view—whether they were being used in good faith and whether they were sufficient or apt. You are being asked a question on the latter aspect of the case.

Mr. Morland: May I have the question again?

The Attorney-General: If you were selecting a phrase to put in for these years 1925, 1926 and 1927, you would desire, would you not, to collect a phrase which would convey a clear meaning to the mind of the ordinary shareholder?—Undoubtedly, yes.

You have told me that you did not read the press or concern yourself about that sort of thing, but if in the process of years you had become satisfied that the phrase you had selected conveyed little or nothing to the mind of the ordinary shareholder, you would have adopted some new phrase, would you not?—Undoubtedly, if anybody had suggested to me a phrase which conveyed the meaning better, I would have adopted it. I was not the editor of the phrase.

It could have been put, could it not, very simply, so that there could have been no mistake about it at all?—Are you going to suggest some other words. I am quite prepared to compare them.

Mr. Justice Wright: It is dangerous to plunge into the sea of accountancy. (Laughter.)

The Attorney-General referred Mr. Morland to exhibit 36, on the second page of which, he said, there would be found a profit and loss account for the Royal Mail Meat Transport Company. This, said Sir William, was the report of a hundred per cent. subsidiary, and, of course, the Royal Mail Steam Packet Company, through their directors, would know all relevant facts. He realised that neither Mr. Morland nor any other accountant might think it necessary to put in such details, but he observed that the account mentioned transfers from refund of excess profit duty, transfers from income tax reserve and similar matters £25,250. Such items so set out, he suggested, had at any rate the merit of complete simplicity.

Mr. Morland: That gives more detail, it gives the actual figures under each head.

The Attorney-General asked what was the difference in the case of the Royal Mail Steam Packet Company. Of course, he realised that they had dividends from other sources. In the case of the Meat Transport, they particularised the figures and added them up. In the Royal Mail Steam Packet account they did not say "Transfers from," they said "Adjustment of."

Mr. Morland: I don't see any difference between "transfers from" and "adjustment of."

We have heard that the word "Adjustment" might mean much or little?—Not in this case. It was put in because it was large. If it was not large, it would have never have been put in.

Do you say that the ordinary shareholder ought to have inferred something, not merely from the words, but from the position they occupied in the account?—From the fact that the words were in at all. Amplifying his answer later, Mr. Morland said that the item in question was associated with two other amounts which the shareholders knew to be large. If it had been small, it would not have been mentioned. It was put in in that particular year, because it was large.

The Attorney-General: I am asking you to consider the effect on the mind of the ordinary careful, prudent shareholder—try and come down from the higher mathematics. The word "Adjustment" might mean something very small or very large?—I must take that from you, I suppose.

The Attorney-General said he took the suggestion from Lord Plender.

Mr. Morland said Lord Plender had stated that it might be small or large. He agreed in general, but he did not agree in that particular case.

The Attorney-General said he admitted that Sir John Simon had pointed out that the words "Less depreciation" showed that "Adjustment of taxation reserves" fell on the side of the account which made the thing larger and not on the side which made the thing smaller.

The Attorney-General then referred Mr. Morland to the statement known as table 21, which had been produced in Court.

Was it a fact, he asked, that for certain of the years set out the company each year was being run and operated at a loss after provision had been made for depreciation?

Mr. Morland said that in connection with the figures given, the word deficit was used on the statement.

Sir William Jowitt: Don't bother about the figures on the statement.—Then it depends on what you mean by "Run."

I mean that the normal earnings of the company were a minus quantity instead of a plus quantity?—The normal earnings of the company during those years, I think, were not sufficient to meet the full depreciation.

Mr. Justice Wright: I thought the question as put was a question allowing for depreciation.

The Attorney-General: The account for each of these years shows on the right-hand side what came in. Take the year 1924. That is a balance for the year, including dividends on shares on allied and other companies, less depreciation of fleet. Leave out, for a moment, anything about taxation and reserves. In each of the years 1921 to 1926 inclusive was the company including its gross earnings, less expenses and depreciation, and including dividends, running at a loss?

Mr. Morland: Well, I think there is a possible exception in 1923. You see there is a special debit there of £64,000, and what is called the deficit is only £20,000. That might make a small credit if you brought that back. In 1924, similarly, you have £75,000 special debits. If you take that off £97,000, it leaves you very close. Then 1922 again is very near. You have £120,000 special debit, and the deficit so called is only £135,000.

Perhaps the word deficit is misleading. Is there anything else you see, apart from that word deficit, which has been criticised, that is misleading on this document?—It is quite an accurate synopsis of the figures, but as far as arrangement goes, I don't think it shows anything.

Questioned further on this point, Mr. Morland said, "I should put it that the accountant had a method of classification which does not appeal to me."

The Attorney-General: It does not much matter how it is drawn, so long as we have regard to the fact that the company to carry on its business has to pay its debentures and to pay interest and discount, and as long as we realise that those are not included there. If they were, the deficit would be much greater. Is this the position, that bearing in mind what I have said about debentures, from 1921 to 1926, the company had never earned anything like enough to pay its debentures?—That depends again on what you mean by "Earned."

I mean earned, after depreciation. Earned either as an operative company, or as owner of shares in current earnings.—That is quite true if you mean earned in the ordinary sense of the word.

And in those six years it expended very large sums of money in paying dividends?—It paid regular dividends.

Then I come to the year 1927. You see this document shows that we have a surplus, in this case?—That is so, yes.

But depreciation, on the other hand, in 1927 had fallen below the 5 per cent. which had hitherto been maintained?—I don't think so. I think the evidence was that the reduction in depreciation was due to the loss of two steamers.

Sir John Simon (interposing) said he had mentioned earlier that this was due to the fact that two ships were lost.

Mr. Morland said he thought that Sir William McLintock's figures in this connection showed a little bit of a mistake in the calculations.

The Attorney-General: You think that is the only mistake in the figures?—So far as I know in the figures, yes. I have not read the report meticulously.

That year does show a surplus if you include £300,000 bonus?—Yes.

Would you agree, apart from the technical rules of accountancy, that bonus was an abnormal receipt?—Yes, they were not out of the profits for the year.

Sir William Jowitt suggested that apart from the bonus there was not enough to pay debentures and interest.

Mr. Morland said he thought that was so.

If the shareholders realised at that time what the true position of the company was, and what it expended in carrying on from 1921 to 1927, do you think they would have been very seriously disturbed?—That is not a very easy question to answer. I should doubt if they would. The chief thing a shareholder wants is regular dividends, and that he had had all the time.

What he wants is not merely dividends, but assurance or security that he is likely to go on receiving it?—That is what he never gets in an industrial company.

You have no doubt, have you, as a business man, that if the shareholders had been told "From the year 1921 to 1927 we have never earned enough to show a profit after depreciation, we have expended in the years 1921 to 1927 special credits to the extent of over £5,000,000," the shareholders would have been very seriously disturbed?—I think they would have been surprised.

The Attorney-General: You think they would have been surprised.

Mr. Justice Wright: The Attorney-General has asked you about expenditure in those years of £5,000,000, from the special credits. Did that go to the current expenses?

Mr. Morland: Current expenses, plus dividends on the shares, my Lord.

The Attorney-General: So that the company was expending all that sum two years before it had to meet a liability. But that is policy, perhaps, and not a matter for you?—I think that is so.

The Attorney-General said that in accounts which Messrs. Price, Waterhouse & Co. had sent to him, dealing with the years 1926, 1927 and 1928, there were such headings as "Income Tax Reserve," "Corporation Profits Tax Reserve," "Premises Reserve," and so forth. Did Mr. Morland think, he asked, that those descriptions were perfectly accurate?

Mr. Morland said he thought they conveyed the right impression.

I see in a later account, Messrs. Price, Waterhouse and Co. deal with the income tax for that year, and they thus describe it: "Transfers from any reserve, £350,000. Would that be, to your mind, a perfectly accurate way of putting it?—That figure in 1928 was different to 1926 and 1927. It was really adjusting reserve to what was required. I think, generally speaking, the income tax reserve in the last few years, 1925, 1926 and 1927 was rather increasing, but in 1928 it was whittled down.

The Attorney-General remarked that that was correct.

Sir William Jowitt asked Mr. Morland if he would not agree that a phrase should have been used which brought home to the ordinary investor that very large sums were being transferred from reserve.

Mr. Morland said he agreed. That was the object which he had had in view, in suggesting the words which he had suggested.

And you tell the jury that with your experience and knowledge of accounts, you intended the phrase which you used to convey that to the mind of the ordinary intelligent investor?—Undoubtedly.

Sir William Jowitt concluded his cross-examination of Mr. Morland, and Sir Patrick Hastings conducted a brief re-examination.

Sir Patrick, referring to the comparison which had been made between the account of the Meat Transport and that of the Royal Mail Steam Packet Company, asked Mr. Morland if he had intended that there should be any difference whatever between the word "Transfer" in the one case, and the phrase "Adjustment of Reserves" in the other.

"No," replied Mr. Morland.

In your opinion, is the latter expression equally applicable?—Yes, I think so. I rather prefer the words "Adjustment of Reserves" that we have in the Royal Mail accounts. Mr. Morland added that he thought the expression must have been used before.

This concluded Mr. Morland's evidence.

MR. HENRY MORGAN.

The next witness called was Mr. Henry Morgan.

Examined by Mr. Stuart Bevan, Mr. Morgan said he was President of the Society of Incorporated Accountants and Auditors. He had been practising the profession of an accountant for 27 years.

Mr. Stuart Bevan: You observe that in the case of each profit and loss account the total figure is given, described as "balance for the year, including dividends on shares in allied and other companies, adjustment of taxation reserves, less depreciation of fleet?"—I have.

With regard to those amounts which have been brought in and the bringing in of which is challenged in the circumstances, what do you say? Were they properly brought in or improperly brought in?—In my opinion these items were properly brought into the balance-sheet for the year as the profit available for dividend.

Will you say whether or not, upon the facts as known to you, the balance sheet is properly drawn up so as to exhibit a true and correct statement of the company's affairs as shown by the books of the company?—It is.

With your knowledge of the position of the Royal Mail Steam Packet Company as it was, on the evidence before the Court, in 1926 and 1927 had you been the auditor of the company, would you have signed the balance sheets in this form?—I should.

In each year?—In each year.

Examined by Sir John Simon: A reference was made just now to adjustments which might fall to be made if, say, the figures were being prepared for a prospectus. In a certificate by an accountant no doubt the precise adjustments would depend on the form of the certificate. What I wanted to ask you was this. Without turning to it, as we all know it by heart, you know the exhibit which is called 21?—I do; that is that long sheet, Mr. Cason's statement.

Yes. Now supposing that the certificate is being prepared on the basis, as indeed it often is, of profits before charging taxation. Is that not a common form?—Frequently.

Then, as I follow, in fact you said just now, you would exclude, for instance, such a sum as the £550,000 E.P.D. which, as we know, comes in the year 1926?—Yes, you would, or course, exclude all debits and credits for taxation.

That is excluding something on the one side, but do I understand rightly you would equally exclude all the taxation that had been paid or provided for?—Yes, of course, it all depends upon the wording of the certificate you have to give. You would probably have your wording of the certificate settled and then you would have to calculate your figures in the light of that wording.

His Lordship: You would not suit the figures to the certificate, would you?—There is no uniform form of certificate which is incorporated in a prospectus. You see a great many variations.

Sir John Simon: What I want to be quite clear about, and I think what you have said really does make it clear to me, is this. Looking at exhibit 33, assuming that you were going to carry E.P.D. refund from one year to another year, or the surplus income tax from one year to another year, as I understand it, it means moving an item from one year's column to another year's column, sometimes a plus and sometimes a minus?—That would be so.

And supposing there is surplus depreciation which is to be put back, that would involve, would it not, adding to the published profits of each year the difference, say, 1 per cent., between 4 and 5 per cent?—That is so, but it is very frequent in such a certificate that they give you the amount of the profits before they bring depreciation into account at all. It is before taxation and before depreciation.

I have in mind what is on exhibit 32; that is why I am putting the question to you. It speaks of surplus depreciation being brought back?—Yes.

If we assume that the depreciation being, in fact, 5 per cent., 4 per cent is thought necessary, do I understand rightly that the operation involves adding each year to the published profits a further sum which, in fact, is 1 per cent. depreciation?—That would be one way of doing it. What I should do would be to add back the whole of the depreciation that had been written off and deduct the proper amount.

Take another example. Would it also involve adding to the published profits the additions to the insurance fund?—Yes.

His Lordship: Because the profits are the source from which the insurance money comes.

Sir John Simon: Yes, your Lordship has it entirely.

Cross-examined by the Attorney-General: You have been asked about the prospectus, and I want to ask you this question therefore. Have you got the accounts? Take as an illustration the year ended December 31st, 1927.—Will you please give me one of those books. (Book handed to the witness.)

You see the phrase there on the right hand side. You know it by heart: "Balance for the year, including dividends on shares in allied and other companies, adjustment of taxation reserve, less depreciation of fleet, £697,000."—Yes.

Supposing you had been asked, for the purposes of a prospectus, to make yourself responsible for a statement on those lines—that is to say, that the certificate is to be exactly in that form—and you are asked to certify that the balance for the year and so on has been £697,456, and you are asked to certify that in a prospectus, would you have done it or not?—It all depends upon the form of the certificate which I am required to make.

I told you exactly what the form was. The form is the form set out there. You do not suggest, do you, as President of your Society, that any accountant for a prospectus would certify such a form as that?—I do not follow what form you say.

The year ended December 31st, 1927; 1925, 1926 or 1927 would do; 1927 is the one I happen to have. Now I am asking, supposing you were asked to make a certificate for the purposes of a prospectus; you are told it is going to be used in a prospectus—that is to say, that you are going to the public to ask the public to invest money—and somebody comes and says: "Mr. Morgan, I want the use of your name; I want you to certify to this description: 'Balance for the year, including dividends on shares in allied and other companies, adjustment of taxation reserve, less depreciation of fleet, etc., £697,000,'" would you have ever done such a thing?—I should want to put it that it was the balance available for dividend for that year. I should want to make it clear that it was the balance available for dividend; because, of course, there is a tremendous difference between the balance of profit available for dividend each year; the way in which it has to be arrived at for the purpose of a balance sheet, and the profit earned in a year calculated by ordinary commercial standards. Obviously here this cannot be profit earned in the year. Take the first item, "Including dividends on shares in allied companies." Now dividends on shares may be the result of profit earned in the year, in the previous year, or several years previously.

Had you been asked, for the purpose which you knew were the purposes of the prospectus, to give a certificate, and had you been asked to use these words and told that you were going to use these words—now follow them you know them by heart: "Balance for the year including dividends on shares in allied and other companies, adjustment of taxation reserves, less depreciation of fleet," would you ever have consented to put your name on a prospectus to that phrase.?—It appears to me to be merely repeating what has been stated in the accounts for each year. As auditor I should not have considered myself

responsible for the extent of the disclosure in the profit and loss account, and it is a sort of certificate that I should not like. I should like it to be explained a little further that this was the amount of the profit that became available for dividend during the year.

Does it come to this: that you would say, "No, if you want me to certify on those lines I will not do it; if you ask me to certify a balance available for dividend for the year in a prospectus, then perhaps I would?"—That is exactly what I do if I signed the balance sheet.

Now you have the book there. Just see how the word "available" was used and dropped out. Do you notice that?—Will you show me?

Take for instance, the year 1925; it is a very interesting point. Of course, this is not evidence against Mr. Morland, because this is a report. Attached to the accounts for the year 1925 you will find a report. You see this: "The Court of Directors submit herewith the audited accounts of the company for the year 1925. After providing for depreciation and taxation there is a balance available of £769,000." I think you may take it that up to the year 1925 that has always been the phrase in which these accounts had been presented?—I should not criticise that.

Now look at the year 1926: "The Court of Directors submit herewith the audited accounts of the company for the year ended December 31st, 1926. After providing for depreciation and taxation there is a balance for the year."—Yes.

The Attorney-General: So that the word "available" if I am right, is certainly in 1925, and I think it is in all the earlier years?

Sir John Simon: No, sometimes it is and sometimes it is not. I think if there is a point in it Lord Kylsant ought to have been asked the question.

The Attorney-General: I think so, too; but I did not know there was a point in it. (To witness): Does it not occur to you, if there is a possibility of an investor being misled, there is also a possibility of a shareholder being misled?—No, I do not think so.

Why not?—Not when it is used in conjunction with the balance sheet.

Why not?—When you say a shareholder being misled, it is a very comprehensive term, because obviously you get such very greatly varying classes of shareholders.

Do not spend time on that; I do not mean a half-wit on the one hand, or a specialist in accounts on the other hand; I mean an ordinary intelligent prudent shareholder?—I do not think so, because the ordinary intelligent, prudent shareholder does know that the balance shown in a balance sheet or profit and loss account is the balance available for dividend.

Then why is it that you say there would be a chance or a possibility of the ordinary prudent investor being misled by the statement in the prospectus, and no chance of the ordinary prudent shareholder being misled by the same statement in the profit and loss account? Explain that to the jury.—I should prefer that wording and if I just indicated a preference for it, and they declined to do it I should object, because I might think that there was some sinister motive behind it.

You must really try to answer the question. I ask you to explain to the jury why it is that there would be a possibility of an ordinary prudent investor being misled, and yet you say there would be no possibility of an ordinary prudent shareholder being misled. Why is that?—There is always that possibility, sir. It is unlikely.

Is it more unlikely in the case of a shareholder than in the case of an investor?—No, I should say not—less likely. Of course, there is always this about a prospectus—that so frequently the ordinary applicant for shares or the ordinary shareholder does not study closely either balance sheets or even prospectuses.

I am assuming in each case that the shareholder reads the document carefully and the investor reads the prospectus carefully?—Then I do not think there would be much danger of their being misled.

You told me there would be a possibility?—Yes, a possibility, for the reason I indicated, that so frequently they do not read them closely.

Do you now agree that there is just as great a possibility of the shareholder being misled as there is of the investor being misled?—No; I do not think there is the same, because the one is received by him in conjunction with the balance sheet and read by him at the same time.

What is there in the balance sheet which would put him wise? Look at the balance sheet for 1927.—Because in the balance sheet the balance of profit and loss account is the amount which is available for dividend.

Do you agree, so far as the directors putting forward a profit and loss account is concerned, do you agree that the directors have to draw the profit and loss account so as to exhibit a true and correct state of the company's affairs. Leave out the auditor?—For the purpose of my answer I suppose I may ignore the fact that in the charter of the Royal Mail there was an obligation to publish a profit and loss account. At this time the Companies Acts did not require public companies or any companies to issue profit and loss accounts to their shareholders. Even where the balance sheet was obligatory there was no obligation to issue a profit and loss account.

His Lordship: That came in the Act of 1929?—Yes, and even now, my Lord, there is no indication as to what a profit and loss account shall contain.

The Attorney-General: I quite follow that. This, of course, is a chartered company, and different considerations apply, but there are two different things. If you do publish a profit and loss account, must not that profit and loss account represent a true and correct view of the company's affairs?—If a profit and loss account is published, I do not see that objection can be taken to it on the ground that it is uninformative, but if it is published my view is this, that it shall not be so worded or stated that it is capable of deceiving or misleading.

Not to be capable of misleading?—That is my view.

This concluded Mr. Morgan's evidence.

MR. H. L. H. HILL.

Mr. Henry Lancelot Hingston Hill, M.A., was the next witness. In reply to Mr. Stuart Bevan, he said:

I am President of the Institute of Chartered Accountants for the current year, and have practised as an accountant for 27 years. I have been in Court during a considerable part of the time occupied by this trial. I have heard the opening of the learned Attorney-General, I was here throughout the time Sir William McLintock was giving evidence, and I am familiar with those questions which have arisen as to the inclusion in the profit and loss account in the two years 1926 and 1927 of sums drawn from Income Tax, E.P.D., and Corporation profits.

Have you seen the profit and loss accounts for the two years?—I have.

And you saw how the balance for the year is set out as including dividends on shares in allied and other companies, adjustment of taxation reserves less depreciation of fleet?—Yes.

Will you tell my Lord and the jury whether, in your opinion, the amounts in question in those respective years are properly in?—In my view they were properly brought in.

And had you been auditing the accounts of this company in these two years, on the facts as known to you now with regard to these matters, and the position of the company as it was in those days, would you have signed this balance sheet as auditor, or not?—I should like it clearly to be understood that I have not audited the accounts, I have not investigated the accounts, and have heard only part of the evidence. But there is nothing I have heard in the evidence that would cause me to qualify my certificate in the least.

"Adjustment of taxation and reserves." Is that expression in the balance sheet new to you?—I have heard it before.

Is it a correct or incorrect, an apt or inapt expression in a case where such sums have been transferred from these various accounts?—I think it is quite suitable.

Answering Sir William Jowitt, in cross-examination, Mr. Hill remarked, "From the accountant point of view it is a matter entirely of degree."

Now, transfers from a reserve fund are sometimes brought into a profit and loss account without any notification at all?—That is so.

Then there comes a stage at which—as Mr. Morland has said—some notification must be given?—Yes, some indication.

And does there finally come a stage when there must be, not merely an indication, but perfectly precise phraseology, so that no one could make any mistake about it?—I should think so. It depends on circumstances. One cannot generalise.

Whether this case comes within the first, second or third category is a matter you cannot express an opinion upon, because you have not examined the facts of the case?—Yes.

This concluded the evidence for the defence, and the hearing was adjourned.

The concluding speeches of Counsel and the summing-up of the learned Judge will be published in the September issue. The Verdict of the Jury will be found on page 419.

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HARRIS, EDWIN HENRY, Clerk to Mann, Judd, Gordon & Co., 142, St. Vincent Street, Glasgow.

HARRIS, JOHN, Clerk to A. E. Sherry, Garland & Co., 148, Edmund Street, Birmingham.

HARTLEY, GEORGE, Clerk to Thomas Coombs & Son, Oxford Chambers, Victoria Square, Leeds.

HAWKINS, HUGH FREDERICK, Clerk to Crinkley & Co., 49, Queen Victoria Street, London, E.C.4.

HILL, DAVID BRENTNALL, Clerk to Barnett & Turner, West Gate, Mansfield.

HULME, NORMAN ALBERT, Clerk to Jas. A. Hulme & Co., 88, Mosley Street, Manchester.

JONES, FREDERICK, Clerk to Edwin Collier & Co., Parr's Bank Buildings, 3, York Street, Manchester.

KENNEDY, CYRIL NOBLE (Barwick, Kennedy & Co.), National Provincial Bank Chambers, Cockermouth, Practising Accountant.

KENT, WILLIAM HEDLEY, Clerk to Reddall, Osborne & Co., 1, Guildhall Chambers, Basinghall Street, London, E.C.2.

LINDLEY, ROY MACKENZIE, Borough Treasurer's Department, Town Hall, Wigan.

LITTLE, EDWARD STANLEY, Clerk to R. Simpson Duthie & Co., 9, Devonshire Street, Carlisle.

MARTINI, HESPER, Borough Accountant's Department. Town Hall, High Street, Wandsworth, London, S.W.18.

MOSS, SIDNEY GEORGE, Clerk to Evans, Peirson & Co., Portland House, 73, Basinghall Street, London, E.C.2,

PEARS, GEORGE WILLIAM, Clerk to Holah, Hughes & Co., 112/113, Mansion House Chambers, 13, Sise Lane, Queen Victoria Street, London, E.C.4.

PERKINS, WILLIAM HAYDN, Deputy Accountant, Town Hall, Weston-super-Mare.

PORTER, THOMAS WILLIAM, Clerk to Albert Bates, 50A, Piccadilly, Hanley, Stoke-on-Trent.

POTTS, NORMAN, Union Bank Chambers, Market Street, Stalybridge, Practising Accountant.

POWELL, HAROLD, Accountant's Department, Taf Fechan Water Supply Board, 101, High Street, Merthyr Tydfil.

PURSER, WILLIAM GODDARD, Clerk to Donald H. Bates & Co., Central Chambers, 10, Cheapside, Hanley.

RASTRICK, THOMAS, Clerk to Edward Clough, 40, North Parade, Bradford.

REDDY, CHINCHODE DAMODHER, B.A., Clerk to De Freece & Parry, 128–132, Shaftesbury Avenue, London, W.1.

RICHARDSON, HILDA MARY, Clerk to Nutt & Horne, St. James' Chambers, Derby.

RINTOUL, ISOBEL, Clerk to W. M. Sutherland, 28, Charlotte Square, Edinburgh.

RUSSELL, JOHN CHARLES, Clerk to Collins, Tootell & Co., 11, Queen Victoria Street, London, E.C.4.

SHACKLETON, MAX STANLEY, Clerk to Armitage & Norton, Station Street, Huddersfield.

SHARP, GEORGE WILLIAM, Clerk to Beevers & Adgie, 26, Park Row, Leeds.

SIMPSON, FREDERICK ALEXANDER, Clerk to McPherson, Burtenshaw & House, 81, Cannon Street, London, E.C.4.

SMITH, HAROLD LOUIS POTTIER, Clerk to P. D. Leake & Co., 25, Abchurch Lane, London, E.C.4.

SMITH, JACK ASHWORTH, Clerk to Parkinson, Mather & Co., 5, Clarence Street, Albert Square, Manchester.

SMITH, JAMES LEONARD, Clerk to A. Turner Solomon, Investment Buildings, 67, Lord Street, Liverpool.

SMYTH, ROBERT PATRICK JOSEPH, Clerk to Purtill & Co., 33-34, Anglesea Street, Dublin.

STAPLES, LANCELOT, Clerk to Wykes & Co., 24, Friar Lane, Leicester.

STEVENS, HENRY WILMOT, H.M. Inspector of Taxes, Nottingham 1st District, Exchange Buildings, Cheapside, Nottingham.

TEMPLETON, ROBERT SHAW, Clerk to D. L. Sellers, 27, Portland Street, Southampton.

TOWERS, WILLIAM MAYNE (William Towers, Naismith & Towers), 44, Brazennose Street, Manchester, Practising Accountant.

TUCKER, FRANCIS, 23-24, Queen Street, Exeter, Practising Accountant.

WHITELEY, GEORGE FIRTH, Clerk to E. V. Williamson & Co., Greek Street Chambers, Greek Street, Leeds.

THE DUTIES AND RESPONSIBILITIES OF LIQUIDATORS.

IN the Chancery Division on July 16th, Mr. Justice Eve had before him a summons taken out by Mr. Robert Stanley Dalgleish, a creditor of the Blyth Shipbuilding and Dry Docks Company, Limited, in voluntary liquidation, by which he asked for a declaration that Mr. Harold Ancaster Edwards, Chartered Accountant, of Gibb Chambers, Westgate Road, Newcastle-on-Tyne, the liquidator of the company, had committed a breach of trust in that, as liquidator and without proper authority, he prosecuted an action in the name of the company to set aside an agreement for the sale of the company's assets. The agreement was dated October 18th, 1926, and the action was dismissed by consent in January, 1929. The applicant also asked for an order that Mr. Edwards should pay to him for the benefit of the creditors the sum of £1,171 15s. 4d. costs which he (the liquidator) was alleged to have incurred.

Mr. Edwards, in denying the allegations, pleaded that before taking action he was advised by eminent Counsel that there was a *prima facie* case for setting aside the agreement on the ground that it was invalid. Further, that he acted *bona fide* and tried to do his best for those concerned, and that he had no feeling of hostility towards the applicant or anyone else.

After a good deal of affidavit evidence had been read, and reference had been made to the documents which were submitted to Counsel for their opinion as to whether there was a case to prosecute, negotiations for a settlement were concluded.

The settlement was announced by Mr. Gavin Simonds, K.C., for the applicant, who said that they would take an order staying all proceedings on the summons on terms which his Lordship had seen in his private room, prefacing the order with the words that his Lordship was of the opinion that the terms were for the benefit of the creditors of the company.

Mr. Justice Eve said he thought the terms were fair, and that on the whole he could say that they were for the benefit of the creditors. He added that he hoped the case would be a warning to liquidators in general that these matters were not to be dealt with without due consideration. Liquidators stood in the position of quasi-trustees for creditors and shareholders, and they had the greatest consideration shown to them. If they put the facts into a form which could be placed before the Court they would find themselves protected in every way if they acted under the direction of the Court. They ought not to be slow to avail themselves of the protection which the Court offered to them whenever they thought it necessary to ask for it.

The Directors of the Midland Bank Limited have paid an interim dividend for the half-year ended June 30th last at the rate of 16 per cent. per annum, less income tax.

Some Problems affecting the Profession of Accountancy in England

SUMMARY of an Address delivered before the New York State Society of Certified Public Accountants by

MR. THOMAS KEENS, F.S.A.A.,
Past President of the Society of Incorporated Accountants and Auditors.

Mr. KEENS said: When I was privileged by the invitation of Colonel H. Carter, your President, to attend the annual meeting of the New York State Society of Certified Public Accountants I spoke without notes, and it has been suggested that I might elaborate the address somewhat for your Journal. This I gladly do.

The principal concern of all members of the profession in every country is the present severe depression in trade and industry. Although Great Britain has suffered from unemployment for upwards of ten years, it is only during the last two years that the number of unemployed has reached the peak figure of two and a half millions. This figure, admittedly, includes a certain proportion of those for whom the provisions of the Unemployment Acts were never intended to apply; for instance, the woman worker who ceases to follow her employment voluntarily because of marriage, and the large number only partially employed who, by arrangement with their employers, work only three days out of six, and draw unemployment pay for the remainder of the week. When all necessary deductions have been made to arrive at a true index, the remainder is a figure that fills all thoughtful people with deep concern.

According to Mr. J. M. Keynes, that outspoken and competent economist, British industry may be able to stand the burden of a million unemployed, and with some difficulty two millions, but the present number approaches the breaking point.

A revival of trade throughout the world alone can bring a real solution of the problem. Then a large number would be absorbed and employed in industry on an economic basis. The remainder could be dealt with by special schemes, for which various proposals have been made, and the problem would be of manageable proportions.

Obviously, the depression in industry has affected the accountancy profession. The bodies of Chartered and Incorporated Accountants between them have 15,000 members, and the number of entrants shows no sign of diminishing—rather the reverse. This is not remarkable. The process of rationalisation goes on, unitary production becomes larger, and the possibilities of men becoming principals in business are becoming less. Therefore, the professions become more attractive, since they offer opportunities for an independent livelihood, though not, indeed, comparable with the glittering prizes of wealth which industry and finance award to the favoured few. The business of the accountancy profession bears a direct relation to the volume of trade and industry upon which our welfare depends. We are, therefore, much concerned for the future.

The present high rate of direct taxation in Great Britain shows no signs of diminution, although in the opinion of competent observers the limit of taxable capacity has already been reached. It is poor consolation to the long-suffering taxpayer that direct taxation has brought some grist to the mill of the accountancy profession.

The slump in the Stock Market of New York was followed with the greatest attention in London, and its repercussions have not been confined to America. Prior to the autumn of 1929 there was an orgy of speculation on the London Stock Exchange, though perhaps less intense than in New York. In England there was a reason for this which, I think, was not operating in America. Profits or losses on Stock Exchange transactions in England are regarded as capital gains or losses; the gains are not subject to Income Tax, and the losses are not allowed. The taxpayer, therefore, having desired some additional income not subject to tax (and, of course, he or she always expected to avoid losses) found the temptation to speculation with such a high rate of tax tremendous. Opportunities for speculation were bound to be offered, and the story of the gap between promise and performance makes sorry reading.

Mr. Henry Morgan, my successor in the office of President of the Society of Incorporated Accountants and Auditors, in his address at the Conference of the Society last year produced some startling figures which made a profound impression upon the City of London and the country. He said: "An examination of the records of the new companies formed during the recent boom is very illuminating. Indeed, I must confess that when commencing my investigation to arrive at the figures which I am about to given, I did not anticipate that they would so completely illustrate the enormous extent to which the investing public has been exploited during the last few years. Taking the last six months of the year 1928, I find that the prospectuses of 58 companies formed for the purpose of establishing new businesses or developing new inventions or processes, were advertised in *The Times*. Their issued capital amounted to £15,117,000, and the estimated profits of 52 of the companies totalled £5,219,000. The prospectuses of the remaining six predicted substantial profits, but modestly refrained from stating any amounts. According to the latest information I have been able to obtain concerning these 52 companies, 16 have not yet published their first accounts, and 14 of these are in liquidation. Of the remaining 36 companies, only 5 earned profits which totalled less than £48,000 as compared with the prospectus estimates of over £214,000. The remaining 31 companies whose accounts are available suffered losses aggregating £690,000 as compared with prospectus profits estimated at £3,178,000. Of the whole 58 companies only one has paid a dividend, and 27 are already in

liquidation, 14 under compulsory orders, in which connection the scathing comments of the Official Receiver are not without interest. Further, it would appear that at least 16 of the remaining companies are in serious difficulties owing to losses from divers causes, and, in nine cases, from the defaults of underwriters.

"It is difficult to arrive at any definite estimate of the present value of the shares of these 58 companies. There is little likelihood of more than nominal amounts being returned to the shareholders of those companies in liquidation, whilst the shares of such remaining companies are as no longer quoted on the Stock Exchange are of negligible value. The value of the shares of companies still quoted is less than £750,000 at the present market valuation, which in many cases is purely nominal. On this basis it would appear that some 95 per cent. of the capital of these 58 companies has been lost, although this does not represent the total loss, since the shares in many of the companies were purchased by the public at substantial premiums."

Circumstances such as these—and doubtless they have their counterpart in other countries—have contributed to the present condition of affairs, producing almost abyssmal pessimism. It is, therefore, not too much to say that the bulk of sound securities, particularly industrials, are now considerably undervalued.

The state of things to which I have referred raises again the important question of the proper control by shareholders over their own property. Under English Company Law, the auditor is appointed by the directors in the first instance, but must be elected by the shareholders thereafter, his function being to make a report on the balance sheet to the shareholders annually. The directors again are subject to election by the shareholders, and can be replaced as and when the shareholders desire. There is considerable discussion in England as to whether by these means the control exercised by the body of shareholders is really effective.

Mr. Morgan also answered this question on the platform and in the public Press, on the following lines. Voting at annual general meetings is in the first case by show of hands, when every person present has one vote. The Articles generally provide that the declaration of the chairman that a particular resolution is carried or carried by the requisite majority or lost is final and conclusive. The minority has a right to demand a poll. Before the meeting, however, the directors usually send out a form of proxy. This proxy appoints each of three or more of the directors as alternatives, to vote for and in the name of the shareholder. In any large company the proportion of shareholders attending is necessarily small, and the proportion giving proxies in favour of the directors is usually large. On a poll being demanded, the proxies are put in and independent shareholders are usually defeated.

How is this to be rectified? Mr. Morgan suggests that the practice should be made analogous to that of bankruptcy. In bankruptcy proceedings, the creditor can give a general or a special proxy. If a general proxy is given, it can be used by the holder to vote upon any resolution submitted; if the proxy be a special one, the holder appointed can only vote in the way specified. Thus the proxy given by a shareholder would indicate whether his vote was to be given for or against any particular resolution, and each shareholder's vote would thereby become effective.

Whatever the merits of this proposal—and there are many—the prospects of any amendment of the Companies Act are somewhat remote. The Act only came into force on November 1st, 1929, and no President of the Board of Trade and no Government could find the necessary time at present for a new Bill in Parliament. A further period of time is necessary to gain experience of the working of the Act, and to decide whether any further amendments are necessary. It has always been customary in matters of this description for the Government of the day to appoint a Committee, on which the accountancy profession is represented, and to introduce a Bill in accordance with the Committee's recommendations.

Some measure of independence is secured to auditors by the provision in the present Act that no person, other than the retiring auditor, shall be nominated unless fourteen days before the meeting notice to move the appointment of some other person shall have been given in writing by a shareholder. The notices of the meeting are usually sent out seven days before the meeting, and, therefore, the shareholders do have notice of an attempt to supersede the auditor. Theoretically this offers some protection for him, but in practice very little. In any case, it does not remedy the situation created by the present system of proxies, as the directors may desire to get rid of an inconvenient auditor, and if provided by the shareholders with the necessary proxies they would not hesitate to use them on the resolution for the appointment of auditors. This question only arises infrequently, but it appears to me to be a question that must sooner or later occupy the attention of Parliament. When Parliament does deal with the matter, as on all previous occasions the question will be considered from the point of view of protection for the investing public and the community, and not from that of the advantage or otherwise of the accountancy profession.

In concluding I would like to convey to the President and members of the New York State Society of Certified Public Accountants the greetings of the Society of Incorporated Accountants and Auditors, and to thank you for the kind reception you have given to me at this meeting.

The Metropolitan College announces that Mr. R. Glynne Williams, A.C.A., Assistant Director of Accountancy Studies, will in future act as the Advisory Officer of the College at its City Office, 40-42, Queen Victoria Street, London, E.C.4, in place of Mr. J. Lancaster, F.C.A.

COMPANY REGISTRATIONS AT SOMERSET HOUSE.

The following is a summary of the registrations from January 1st to June 30th, 1931, as compiled by Messrs. Jordan & Sons, Limited, Company Registration Agents, Chancery Lane, London, W.C. :—

Classes.	Public Companies.*		Private Companies.		Totals.	
	Number Registered.	Capital.	Number Registered.	Capital.	Number Registered.	Capital.
		£		£		£
Advertising	—	—	68	131,124	68	131,124
Banks	10	1,796,300	40	731,851	50	2,528,151
Boots and Shoes	—	—	33	135,710	33	135,710
Bricks, Cement, &c.	4	162,200	63	282,300	67	444,500
Builders	1	5,000	212	771,438	213	776,438
Carriers	—	—	112	304,727	112	304,727
Chemists	1	1,000	165	624,195	166	625,195
Clothing	—	—	437	1,781,854	437	1,781,854
Clubs	28	13,400	31	31,060	59	44,460
Drink	3	155,000	29	683,100	32	838,100
Electricity, Gas and Water	7	1,200,700	169	376,500	176	1,577,200
Engineers	6	311,000	178	658,061	184	969,061
Farmers and Planters	2	80,000	53	390,300	55	470,300
Food	5	21,100	333	1,216,725	338	1,237,825
Furniture	—	—	143	556,455	143	556,455
Glass and China	2	113,422	37	116,550	39	229,972
Hotels	1	65,000	53	315,275	54	380,275
Insurance	4	20,200	32	155,200	36	175,400
Iron, Brass, &c.	1	7,000	152	661,808	153	668,808
Jewellery	1	150,000	31	102,250	32	252,250
Kinemas	2	10,000	100	455,500	102	465,500
Land and Houses	4	1,002,600	172	2,239,548	176	3,242,148
Laundries	—	—	36	146,305	36	146,305
Leather	—	—	42	268,500	42	268,500
Merchants	—	—	68	1,627,654	68	1,627,654
Mines	11	473,100	79	584,200	90	1,057,300
Miscellaneous	—	—	107	203,200	107	203,200
Moneylenders	2	25,000	31	106,350	33	131,350
Motors	2	—	246	624,809	248	624,809
Music	1	—	37	162,600	38	162,600
Newspapers	1	—	32	110,800	33	110,800
Nurserymen	—	—	19	43,200	19	43,200
Nursing	4	—	11	31,100	15	31,100
Oil	3	2,200	32	218,200	35	220,400
Patents	—	—	82	261,610	82	261,610
Photography	—	—	28	41,550	28	41,550
Publishers	—	—	51	220,750	51	220,750
Railways	1	60,000	5	4,600	6	64,600
Rubber	4	376,000	16	296,800	20	672,800
Schools	7	32,000	11	43,875	18	75,875
Shipping	—	—	46	206,400	46	206,400
Sports	10	29,350	89	199,790	99	229,140
Stationers	—	—	93	573,853	93	573,853
Stocks and Finance	4	152,100	42	189,103	46	341,203
Textiles	—	—	219	1,789,170	219	1,789,170
Theatres	2	115,000	50	194,780	52	309,780
Timber	1	2,000	61	394,750	62	396,750
Tobacco	—	—	26	83,400	26	83,400
Totals (first half of 1931)	135	6,380,672	4,202	21,348,880	4,337	27,729,552
Corresponding figures in 1930	185	22,514,450	4,254	37,770,173	4,439	60,284,623

* In this column are included "Companies Limited by Guarantee" and "Associations Not for Profit" without Share Capital, such Companies being technically Public however small the Membership may be.

Incorporated Accountants' District Society of East Anglia.

ANNUAL DINNER.

The members of the Incorporated Accountants' District Society of East Anglia entertained a distinguished company at their first annual dinner at the Maid's Head Hotel, Norwich, on July 24th.

The PRESIDENT (Mr. H. Harper Smith, J.P., F.S.A.A.) was supported by the Lord Mayor of Norwich (Miss Mabel Clarkson, C.B.E.), the Sheriff of Norwich (Mr. B. B. Morgan), Mr. W. R. Smith, M.P. (Parliamentary Secretary to the Board of Trade), Mr. E. Cassleton Elliott, F.S.A.A. (Vice-President of the Society of Incorporated Accountants and Auditors), Mr. A. A. Garrett, M.A., B.Sc., F.C.I.S. (Secretary), Mr. H. P. Gowen, J.P., F.S.A.A. (Chairman of Norwich Publicity Association), His Honour Judge C. Herbert-Smith, Mr. Wansborough Jones (President, Norwich Incorporated Law Society), Mr. A. A. Emmett, Mr. G. B. Blunden (Senior Inspector of Taxes for Norwich), and Mr. E. T. A. Andrews (Inspector of Taxes, Norwich Third District).

After the loyal toast had been honoured,

Mr. H. P. GOWEN proposed the "City of Norwich." He said there was no provincial city of the size of Norwich which sent its products so far afield, and they were appreciated wherever they went. There seemed to be something inherent in the artisan class of the city; they seemed to be born for their job and they did it well. Referring to his association in civic work with the Lord Mayor—who was Sheriff during his own Lord Mayoralty—Mr. Gowen said her outstanding characteristic was a very high sense of duty and of serving others. (Hear, hear.) Of the Sheriff, Mr. Gowen remarked that there was something wrong with a man who had no enemies, but he had not yet discovered what was wrong with their Sheriff. (Laughter and applause.)

The LORD MAYOR, in responding, said that as chairman of the Publicity Association and in other capacities, Mr. Gowen never lost an opportunity of making known the attractions and claims of their city. She was quite certain that as one result of the publicity work of the last few years Norwich was no longer looked upon as an insignificant town tucked away in a corner of the map, difficult to get at and inhospitable to strangers, and was getting known as a favourite centre for visitors' conferences and social functions. "Yours," went on the Lord Mayor, "is almost the last really prosperous profession. (Laughter and applause.) Accountants very rarely complain—if they do it is for their clients rather than for themselves. Business may grow less and less and there may be less and less money to audit; private citizens may more and more be relieved of all the worries of an income by the exceeding thoughtfulness of the Chancellor of the Exchequer—(laughter)—but it makes no difference to you. I suppose the less money there is to audit the more need there is for your help to look after what is left. (Laughter.) Yours is a very awe-inspiring profession. On the City Council many schemes come before us, and they all go well and hopefully until we come up against the City Accountant with his hard figures and inexorable facts. There is nothing so damping to the visionary and the idealist and nothing harder to argue against than figures. In most voluntary societies, too, the hon. treasurer heaves a sigh of relief when he gets his accounts back safely passed by the auditor, but I would like to say how much we owe to your profession for the tremendous amount of voluntary work you do and the advice and help you give. Many of us amateur treasurers give a great deal of trouble, but I know from experience the kind and generous way you deal with us. Therefore quite probably you do earn and deserve your prosperity by acting as a check on public expenditure and as friends and helpers to so many voluntary societies. (Applause.) I do most heartily hope that your prosperity may continue so that none of us may scruple to come to you for help in any good cause or need that arises in our city." (Laughter and applause.)

The Sheriff also replied.

Mr. WALTER SMITH, M.P., submitted "The Society of Incorporated Accountants and Auditors." Confessing to some ignorance of the subject of his toast, he remarked that he was not even in the position of a certain member of the House of Lords who dreamed he was addressing that august assembly, and when he woke up found he was. (Laughter.) Accountants were mainly concerned with looking after the finances of those people who were overburdened with that commodity, and also looking after business finance. Unfortunately in neither of these ways was he brought into contact with them. There was another service they rendered and that was in regard to income tax, which he appreciated because he was persuaded their profession was very keenly interested that every penny due to the Chancellor of the Exchequer should be properly accounted for. Here again he did not come into contact with them because he was not allowed to pay income tax—he had it stopped. (Laughter.) Although he had pleaded a personal ignorance he was not entirely without information concerning them, thanks to their Secretary, Mr. Hayden. He was addressing a gathering that had escaped the result of the world depression, so that this was really a meeting at the festive board. In these difficult days some fell by the wayside, but if he understood the position aright, accountants were like Tennyson's brook—they went on for ever. (Laughter.) Whatever might be put forward in terms of criticism of the profession, he was fully persuaded that accountants were making a real contribution towards the affairs of the country. They were living in different times from fifty years ago. Business was becoming more keen; the advance of organisation and the development of technology had put industry in a very different position. The establishment of method and order had made correct accounting a necessity in order that the business might be carried on in a successful fashion. (Hear, hear.) There was no branch of business that could afford to do without accounting. The speaker went on to say that this country was holding its own better than most, and in difficult times like these an absolutely essential condition of our well-being was that we should know and understand where we were. In that respect the accountancy profession was rendering very excellent service. Referring to the information he was given concerning the training of Incorporated Accountants, Mr. Smith said he noted that they aimed at "a clear conception of underlying principles rather than detailed knowledge." How different from the politician, who was all on the surface! It was all to the good, therefore, that members of the profession should be taking their place in the public life of the country. Here in Norwich they had made a very fine contribution towards the public service of this city. (Hear, hear.) "In public life we learn from you the difficulties of some of the things we set our hearts on, but we are gratified that we have your profession to fall back upon, to give us information and guidance and to correct the errors we are likely to make before we go wrong." (Applause.)

Mr. E. CASSLETON ELLIOTT, acknowledging the toast, said that Mr. Henry Morgan asked him to say how sorry he was that he could not attend this first annual dinner. He (the speaker) was proud to be a native of Norwich because he felt that he was just one of a happy family gathering. (Hear, hear.)

"Our Parent Society," he went on, "numbers over 5,500 members. It grows but slowly because we are very careful as to the quality of the members we admit. The first thing they have to learn is the general principles underlying accountancy, and it takes some time to absorb them. When they have absorbed them and passed those examinations, which I am happy to say I passed some years ago, they are fit and able to practise as Incorporated Accountants. That is a great qualification which we all lay great store by. Yet when our examinations are passed we feel that we have only commenced our studies because we are studying all the time. If any student fondly imagines he has finished his studies when his examinations are passed he has made a very great mistake. The Board of Trade brings out new Acts which we have to study, the Chancellor of the Exchequer brings out a new Finance Act every year, and in conjunction with our friends the Inspectors of Taxes they put new clauses into these Acts which nobody understands until they have been to the Law Courts. (Laughter.) I have said 'our friends' because we are in a happy position—we hold the balance of power between the taxpayer and the Chancellor of the Exchequer. Generally, we hold that power very impartially and very fairly. As a result we are alluded to as a prosperous profession. I am sorry in the presence of the Inspectors of Taxes so much stress has been laid on the prosperity of the accountants in this city. When your accounts are sent in, and they see the smallness of the amount, they will remember this dinner and they will examine them more closely than ever. (Laughter.) We are not so prosperous as you would think. Incorporated Accountants bear this in mind: we are like the doctors, when our clients are doing ill we do not neglect them. We consider the question of fee last of all. The first thing we consider is how we can help them, and if, having done that, there is anything left, we present our bill. We are friends and we try to help our clients ill or well. As you know business is bad—I am glad to hear it is not so bad here, but everywhere the depression is felt and accountancy fees are therefore low."

Referring to the voluntary capacities in which accountants serve, Mr. Elliott said their opportunities were many and they readily lent the help of the knowledge which they had gained at considerable cost. So far as publicity work and municipal work was concerned, in Norwich there had been two members of the profession to serve as Lord Mayors, and when the lady sitting opposite him (Miss Acock) was qualified for that position they might have another. (Hear, hear.)

Referring to the formation of District Societies—this one in East Anglia came into being two years ago—he said that one of the features of these Societies was the student members. By being affiliated to the Society immediately they were articled they felt they were being looked after by the various members who had passed their examinations. If they stuck at their work during the whole period of their articles, they should not find the examinations impossible. Mr. Cassleton Elliott concluded with a few happy reminiscences of his early days in Norwich, and added the hope that it would not be the last time he would come to the city. (Applause.)

Mr. A. A. GARRETT, who also replied, mentioned that the Parent Society were concerned with the interests of Incorporated Accountants all over the World.

Mr. A. A. EMMETT proposed "The Incorporated Accountants' District Society of East Anglia." He twitted the Society on its long name, suggesting the title "Eastern Accountants Inc." (Laughter.) Representing the banking profession, he felt like a wolf among lambs, or perhaps he should put it the other way round. "I started my own career," he added, "among accountants. Whether they thought I was fundamentally lazy or that I hadn't the brain capable of evolving into a gymnastic statistician I don't know, but my father was advised to put me into some other branch of business." (Laughter.) "In Norwich," he concluded, "I have always found the members of your profession most helpful and reasonable."

The PRESIDENT thanked the members of the Council and the Committee and the Society for their support during the last two years. They were grateful to Mr. D. V. Hayden for all that he had done in the last two years as Secretary. The President mentioned that he was now the oldest practitioner in the city, and jocularly added that the weight of his years was beginning to sit heavily upon him. ("No, no.") In a reference to the work of the District Society Mr. Harper Smith welcomed the presence of the first lady student, Miss Acock. (Applause.)

Responding for "The Guests," who were toasted by Major S. T. TUNBRIDGE, F.S.A.A., Judge HERBERT-SMITH said he had the greatest admiration for accountants. They were experts of the highest degree.

Mr. A. A. T. Andrews and Mr. G. B. Blunden also replied.

Society of Incorporated Accountants and Auditors.

South African (Eastern) Branch.

ANNUAL MEETING.

The third annual general meeting of the South African (Eastern) Branch was held at Durban on May 22nd. Mr. Douglas Mackeurtan took the chair, and he was supported by Mr. E. S. Crosoer, Mr. L. Hudson, Mr. N. E. O. Jones, Mr. H. E. Mattinson, Mr. G. E. Noyce, and Mr. W. R. Fraser (Honorary Secretary).

Apologies for absence were received from Mr. W. J. O'Brien, Mr. T. C. Mitchell, Mr. Jas. Craib, Mr. A. E. Hurley, and Mr. F. J. Tayler.

The balance sheet and revenue account were laid before the meeting, and the Honorary Secretary read the Auditor's report. The report of the Committee had been previously circulated to the members. The adoption of the report and accounts was proposed by Mr. H. E. Mattinson, seconded by Mr. N. E. O. Jones and carried unanimously.

Mr. H. O. Berend, Mr. T. C. Mitchell, and Mr. W. J. O'Brien, the retiring members of the Committee, were re-elected.

On the motion of Mr. H. E. Mattinson, seconded by Mr. L. Hudson, it was unanimously resolved to donate the sum of £15 15s. to the Benevolent Fund of the Society in London.

A vote of thanks was accorded to the Honorary Secretary for his work during the year and an honorarium was voted for his services.

The Committee also adopted a vote of thanks to Messrs. W. Murray Smith & Berend for the use of their board room for the annual meeting and Committee meetings.

The Chairman intimated that the Honorary Secretary was shortly proceeding to Johannesburg to attend a conference of the three Secretaries of the Society in South Africa to discuss a number of matters in connection with the Society's organisation in the Union.

Extracts from Report.

EXAMINATIONS.

The usual examinations of the Society were held in Durban in May and November, and the entries and results are as follows :—

	Sat.	Passed.
Preliminary ..	2	Nil
Intermediate ..	6	5
Final	7	3

During the year under review the Committee raised the point regarding clerks who had passed the South African General Examining Board's Examinations being allowed to sit for the Special Final Examination of this Society after six years' service in the profession instead of nine as at present. The matter was still under consideration.

MEMBERSHIP.

The total number of members over whom the Committee has jurisdiction was 42 at December 31st, 1929. During the year two members have been transferred to the Committee's register from London ; two new members have been elected, while one member has been transferred to the register of the Northern Committee and one other member has resigned, leaving a total membership as at December 31st, 1930, of 44, made up as follows :—

Fellows	20
Associates	24

STUDENTS' SOCIETY.

In the report presented to you at the last annual general meeting the Committee stated that it thought that the formation of a Students' Society would be of great benefit, not only to students but to members themselves. At the annual general meeting a resolution was passed that a Students' Society should be formed, and, further, that meetings should take place once a quarter. It has not been found possible, however, to give effect to this resolution.

Changes and Removals.

Messrs. Farrer Atkinson & Lowe announce a change of address to Yorkshire Penny Bank Chambers, 7, Stricklandgate, Kendal.

Mr. A. Percy Bardell, Incorporated Accountant, announces a change of address to 36, Paradise Street, Birmingham.

Mr. F. T. Goodliff, F.S.A.A., has entered into partnership with Mr. H. L. George, A.S.A.A., A.C.A. They will practise at 5A, Castle Square, Brighton, under the style of Frank T. Goodliff & George, Incorporated Accountants.

Mr. L. Gostyn, Incorporated Accountant, has commenced public practice at 180, Evering Road, London, E.5.

Mr. J. W. Hair, Incorporated Accountant, has entered into partnership with Mr. S. H. Brooks, Chartered Accountant. They will practise under the style of Brooks and Hair, at Bank Chambers, 33, Bedford Street, North Shields.

Mr. D. G. Joshi, M.A., Incorporated Accountant, has been taken into partnership by the firm of M. K. Dandeker and Co., 8, Sankurama Chetty Street, Madras.

Mr. John Martindale, Incorporated Accountant, has commenced public practice at 257, Wakefield Road, Moldgreen, Huddersfield.

Mr. Rufus Moorhouse, Incorporated Accountant, has commenced public practice at 19, Figtree Lane, Sheffield.

Mr. D. N. Navder, Incorporated Accountant, has commenced public practice at Sohrab House, 235, Hornby Road, Fort, Bombay.

Messrs. Spicer & Pegler, Chartered Accountants, have taken into partnership Mr. Adriaan Evan Spicer, A.C.A. The style of the firm will remain unchanged.

The executors of the late Mr. H. E. Sweeting have made arrangements for the practice to be taken over by Mr. E. Ewart Pearce, Incorporated Accountant, who was associated with him for over 15 years, and has acted as his managing clerk for the past ten years. The practice will be continued at Charles Street Chambers, 4, Charles Street, Cardiff, under the style of Sweeting, Pearce & Co., Incorporated Accountants.

Mr. William Towers, A.S.A.A., announces that he has taken into partnership Mr. H. J. Naismith, A.S.A.A., and Mr. W. M. Towers, A.S.A.A. The practice will be continued under the style of Wm. Towers, Naismith and Towers, Incorporated Accountants, at 44, Brazennose Street, Manchester, and Southport.

Messrs. Wallis, Gluyas & Simpson, have removed their offices to Orchard Chambers, Orchard Street, Bristol.

Mr. Edwin Woolley, Incorporated Accountant, has commenced public practice at 5, Edmund Street, Birmingham.

District Societies of Incorporated Accountants.

BIRMINGHAM.

The annual meeting of the Incorporated Accountants' Birmingham and District Society was held on July 1st, in the Library at 126, Colmore Row, Birmingham, the President, Mr. E. T. Kerr, occupying the chair.

The following meetings were held during the year, and special mention must be made of the excellent mock meeting of shareholders arranged by the students :—

"Amalgamation and Liquidation," by Mr. G. Cameron Ollason, F.C.A. This lecture was by invitation of the Chartered Accountants' Students' Society.

The examination papers were considered by the Students, with Mr. A. P. Bardell, Incorporated Accountant, in the chair.

A general meeting of the Students was held to discuss changes in the constitution of the Students' Section.

"Annual Profits and Gains," by Mr. P. Barnes, H.M. Inspector of Taxes. An interesting subject was dealt with very ably by Mr. Barnes.

"Costing," by Mr. W. H. Grainger, Incorporated Accountant.

A mock meeting of shareholders was arranged by the students, and an extremely interesting and lively meeting was held.

A discussion on the "Minimum Scope of Audit" was held. Mr. T. H. Platts, F.S.A.A., opened the discussion, which was very well attended.

"Costing," by Mr. A. H. Ripley. This lecture was by invitation of the Chartered Institute of Secretaries.

"The Companies Act in Operation," by Mr. H. A. R. J. Wilson, F.C.A., F.S.A.A. The Birmingham Chartered Accountants' Students' Society and the District Branch of the Chartered Institute of Secretaries were invited to this meeting.

The following officers were elected:—President, Mr. Ernest T. Kerr, F.S.A.A.; Vice-Presidents, Mr. J. W. Blackham, F.S.A.A., Mr. J. Bridgwater, F.S.A.A., Mr. J. R. Johnson, F.S.A.A., Mr. H. Harcourt, F.S.A.A., Mr. F. M. Hawnt, F.S.A.A., F.C.I.S., Lieut.-Colonel T. E. Lowe, O.B.E., J.P., F.S.A.A., Mr. T. H. Platts, F.S.A.A.; Council, the President, the senior Vice-President, and officers, Mr. A. P. Bardell, A.S.A.A. (Birmingham), Mr. E. T. Brown, F.S.A.A. (Wolverhampton), Mr. D. E. Campbell, F.S.A.A. (Wolverhampton), Mr. G. Horton, A.S.A.A. (Birmingham), Mr. F. W. Picken, F.S.A.A. (Birmingham), Mr. C. N. Rowe, F.S.A.A. (Worcester), Mr. W. S. Turner, F.S.A.A. (Birmingham); Hon. Secretary, Mr. Percy G. Stembridge, F.S.A.A.; Hon. Treasurer, Mr. W. L. Hand, A.S.A.A.; Hon. Auditor, Mr. W. A. Mumford, A.S.A.A.

The new Standard Rules of District Societies were formally adopted, and it was resolved that the name of the Society now be designated "Incorporated Accountants' Birmingham and District Society" instead of "The Birmingham and District Society of Incorporated Accountant and Auditors." A vote of thanks was accorded the President for his valuable services during the past year to the Society.

EAST ANGLIA.

Report.

The Committee have pleasure in presenting their report for the period May 14th, 1929, to March 31st, 1931.

The District Society was formerly inaugurated at a meeting held at Norwich on June 4th, 1929. The meeting was attended by the Vice-President of the Parent Society, Mr. E. Cassleton Elliott, F.S.A.A., the Secretary, Mr. A. A. Garrett, M.A., B.Sc., and the Parliamentary Secretary, Mr. J. R. W. Alexander, M.A., LL.B.

MEMBERSHIP.

The area governed by the District Society comprises the counties Norfolk, Suffolk, and the Isle of Ely, the present membership being:—

	Fellows.	Associates.	Total.
In practice ..	12	18	30
Not in practice ..	4	37	41
	16	55	71
Students			34
			105

MEETINGS.

The following lectures and meetings were held during the 1929-30 and 1930-31 sessions, the average attendance being 30:—

"Executorship Law," by Mr. W. H. Grainger, F.S.A.A.

"Bankruptcy," by Mr. C. B. L. Prior (Official Receiver).

"1926 and Subsequent Finance Acts," by Mr. G. B. Blunden (H.M. Senior Inspector of Taxes, Norwich).

"Principles of Law," by His Honour Judge Herbert-Smith, LL.D.

"New Companies Act," by Mr. W. H. Grainger, F.S.A.A. Discussion, "Income Tax Cases."

"Some Notes on Shoe Manufacturers' Costs," by Mr. W. Robinson, A.S.A.A.

"Deeds of Arrangement," by Mr. C. A. Sales, LL.B., F.S.A.A.

"Co-Partnership and Profit Sharing," by Mr. P. H. Walker, F.S.A.A.

"Press Criticism of Prospectuses and Auditors' Reports," by Mr. A. S. Wade, Financial Editor, *Evening Standard*.

A complimentary luncheon was held in honour of the Lord Mayoralty of Mr. H. P. Gowen, J.P., F.S.A.A., at the Royal Hotel, Norwich, on June 4th, 1929, when a presentation was made by the President to the Lord Mayor on behalf of the members of the Society.

A complimentary luncheon was held on July 21st, 1930, in honour of the Lord Mayoralty of the President, Mr. H. Harper Smith, J.P., F.S.A.A., who was presented with a piece of plate in commemoration of the honour conferred upon him.

DISTRICT SOCIETY CONFERENCES.

Two Conferences of Representatives of the District Societies have been held in London during the period covered by this report, the first being attended by the President, and the second by the Hon. Secretary. Matters appertaining to regulations of the District Societies and others of professional interest were discussed.

The Hon. Secretary is now from time to time advised by the Secretary of the Parent Society of various vacancies occurring for members of the Society, and he will be pleased to advise members of these vacancies at any time upon application.

Your Committee desire to urge upon both the senior and student members the desirability of supporting the District Society in its various activities, and particularly by regular attendance at the meetings and lectures, which provide useful information for senior as well as for student members.

NORTH STAFFORDSHIRE.

ANNUAL MEETING.

The annual meeting was held at the Grand Hotel, Hanley, on Monday, July 13th, when the President (Mr. Donald H. Bates) occupied the chair.

There were also present: Mr. T. Thompson, Past President; Mr. J. Paterson Brodie, Hon. Secretary; Mr. R. W. Woodhead, Vice-President; Mr. E. Downward; Mr. C. A. Shaw; Mr. R. M. Chapman, Hon. Treasurer; Mr. M. P. Ferneyhough; Mr. T. W. Porter and Mr. S. H. Brueton.

The annual report and accounts were submitted and approved, the President remarking that the District Society had had a very successful year's working.

The President extended congratulations to the various students who had been successful in passing the parent body's recent examinations.

The following were elected as Officers and Committee for the ensuing year: President, Mr. Donald H. Bates; Vice-President, Mr. R. W. Woodhead; Hon. Secretary, Mr. J. Paterson Brodie; Hon. Auditor, Mr. J. T. Sandland; Hon. Librarian, Mr. Andrew Brodie; Hon. Treasurer, Mr. R. M. Chapman; General Committee: Mr. E. Downward, Mr. R. S. Ralphs, Mr. M. P. Ferneyhough, Mr. F. E. Cheetham, Mr. A. Cropp Hawkins, Mr. W. H. C. Wayte, Mr. P. W. Rumble, Mr. S. H. Brueton, Mr. W. C. Coxon, Mr. C. A. Shaw.

It was decided to hold the annual dinner of the Society early in December, if a convenient date could be found, suitable to the President of the Parent Society.

Report.

The Committee has pleasure in submitting its annual report for the year ended March 31st, 1931.

MEMBERSHIP.

The membership of the Society as at March 31st, 1931, was :—

Fellows and Associates in practice ..	20
Associates not in practice	28
Students	46
Total	94

LECTURES.

During the session nine lectures were held, as follows :—

"Economics," by Mr. E. Miles Taylor, F.S.A.A.
"Banking," by Mr. A. W. B. Grimwade (President, N.S. Institute of Bankers).
"Pre-Examination Hints," by Mr. E. Miles Taylor, F.S.A.A.
"Partnership Law," by Mr. W. H. Abberley.
"The Devolution and Administration of Estates," by Mr. H. C. Ellis.
"Executorship Law," by Mr. R. H. Moon.
"Bankruptcy Law," by Mr. C. J. Pyke (Official Receiver).
"Economics," by Mr. Lawton.
"Company Law," by Mr. Leonard Jones.

All the lectures have been well attended.

ANNUAL DINNER.

The annual dinner was held at Stoke-on-Trent on March 27th. The President, Mr. D. H. Bates, F.S.A.A., occupied the chair, and a large number of guests and members were present.

The Secretary attended the Conference of the Parent Society held in Sheffield in September, 1930. The President attended the Annual Meeting in London in May, and he and the Secretary also attended a Conference of Representatives of District Societies on the following day.

Five students were successful in the examinations of the Parent Society, and the Committee tenders its congratulations to them.

LIBRARY.

An excellent library has now been installed, and is being largely used by members, especially members of the Students' Section. Members are invited to make full use of the facilities offered by the installation of this Library.

During the year the Society sustained the loss of one of the oldest members—Mr. T. W. Hayes, A.S.A.A.

The Council of the Parent Society have approved a set of Model Rules for District Societies on the recommendation of the District Societies Committee. These will be submitted for approval and adoption by this Society.

All Fellows and Associates of the Society of Incorporated Accountants and Auditors within the area allocated to this District Society are *ipso facto* members of the District Society without payment of further subscription.

NORTH-WEST LANCASHIRE.

ANNUAL MEETING.

The annual general meeting was held at Preston on June 30th. There were present: Mr. J. Fearnhead (President) in the chair, Mr. Hy. Briggs, Mr. N. Broadbent, Mr. J. Donaldson, Mr. W. A. Davies, Mr. J. H. Ward, Mr. W. H. Marsden, Mr. G. F. Riley, Mr. B. Shaw, Mr. J. P. Duxbury, and Mr. J. Wareing, Hon. Secretary. On the proposition of Mr. Davies, seconded by Mr. Marsden, the accounts for the eight months ended March 31st, 1931, were adopted. Mr. Broadbent proposed, and Mr. Donaldson seconded, that the Model Rules as printed and circulated to members be formally approved, and this was unanimously agreed to.

A discussion took place on the number of members to form the Committee, and eventually it was decided, on the proposition of Mr. Davies, seconded by Mr. Donaldson, that the number should be nine, exclusive of *ex officio* members and any student members who might be appointed.

The five retiring members of the Committee, Mr. N. Broadbent, Mr. S. W. Clarke, Mr. J. Donaldson, Mr. H. Howarth and Mr. J. H. Ward, were re-elected. Mr. William Coope, Mr. D. W. Wilkinson, Mr. J. P. Duxbury and Mr. W. H. Marsden were unanimously elected members of the Committee. Mr. A. S. Oldman was re-elected Hon. Auditor.

The Secretary read the list of student members who were successful in the May examinations, and it was decided that a letter of congratulation be sent to each member.

After some discussion it was resolved that the annual dinner be held at the Park Hotel, Preston, in the last week of November. The Committee were requested to consider a reduction in the cost, especially to student members.

Mr. Broadbent suggested that membership of Chambers of Commerce, in addition to membership of the Preston Chamber, was desirable in the interests of members, and the matter was left in the hands of the Committee for their consideration.

A unanimous vote of thanks was accorded to the Hon. Secretary and Treasurer for their services during the past eight months. Mr. Ward proposed that the best thanks of the meeting be accorded to Mr. Fearnhead for his continued interest in the welfare of the Society, and this also was carried unanimously.

SHEFFIELD.

The annual general meeting of the Sheffield and District Society of Incorporated Accountants was held on June 30th. Mr. Percy Toothill, F.S.A.A., occupied the chair, and there was a large attendance, including representatives from Chesterfield, Doncaster and Rotherham.

The report and accounts for the period September 30th, 1930, to March 31st, 1931, as submitted, were approved. The report has already been published in the July issue of the *Incorporated Accountants' Journal*.

The meeting adopted new rules and bye-laws in accordance with the model rules and regulations approved by the Council of the Society for all District Societies of Incorporated Accountants.

The following were appointed officers of the Society for the ensuing year:—President, Mr. Leslie Lewis, F.S.A.A.; Vice-President, Mr. A. B. Griffiths, F.S.A.A.; Committee, Mr. C. A. Belbin, F.S.A.A., Mr. J. O. Claxton-A.S.A.A., Mr. H. Cunningham, A.S.A.A., Mr. J. H. Free, borough, J.P., F.S.A.A., Mr. C. S. Garraway, A.S.A.A.. Mr. C. E. Gray, A.S.A.A., Mr. A. F. Girling, A.S.A.A, (Doncaster), Mr. E. H. Harrison, F.S.A.A., Mr. F. Smith A.S.A.A. (Rotherham), Mr. C. H. Wells, F.S.A.A. Mr. W. E. Moore, A.S.A.A., was appointed Hon. Auditor, and Mr. H. Gerald Toothill was appointed Hon. Librarian. Mr. J. W. Richardson, A.S.A.A., was re-appointed Hon. Secretary and Treasurer.

Mr. Percy Toothill, F.S.A.A., was heartily thanked for the work he had done during the period in which he had occupied the Presidential Chair, particular reference being made to the successful manner in which he had carried out his duties in connection with the Conference of the Society held in Sheffield in September, 1930.

SOUTH WALES AND MONMOUTHSHIRE.

(CARDIFF AND DISTRICT STUDENTS' SECTION.)

The annual outing of the Cardiff and District Students' Section was held on July 3rd, when a visit was made to the establishment of the Bristol Aeroplane Company, Limited, for the purpose of viewing the aeroplane and engine works. The party numbered 30 and included Mr. Tudor Davies, J.P., F.S.A.A., and Mrs. Davies, Mr. K. V. Stephens, A.S.A.A. (Chairman), Mr. E. V. C. Nicholls (Vice-Chairman), Mr. J. Alun Evans (Hon. Secretary), and the following members of the Committee :—Mr. E. Ewart Pearce, A.S.A.A., Mr. V. F. Alban, Mr. Noel Cliffe, Mr. J. T. Jones and Mr. K. S. Williams.

The journey was made by steamer, and after lunch the party proceeded to the aeroplane establishment by charabanc. Two inspectors of the company (Mr. Blakey and Mr. Chin) conducted the party over the various departments, which included the following :—Machine shop (physical), inspection and laboratory, coppersmiths', fitters', sheet metal, metal construction detail and rolling mill, fabric covering, dope and painting, stove enamelling, erecting, propeller and wood mill. The showroom was also visited, where there was housed a rigged demonstration machine, half for flying and half stripped for inspection.

Tea was served at the aeroplane establishment, and a hearty vote of thanks was accorded the management, the inspectors and the waitresses (proposed by the Chairman and seconded by Mr. Tudor Davies) for their kind hospitality.

In the short time available after tea the head of the costing section was good enough to explain the various costing records and to demonstrate the method of working the Hollerith costing machine.

YORKSHIRE.

Syllabus of Lectures, 1931-32.

The following lectures and meetings have been arranged for the coming session, to be held at the Hotel Metropole, King Street, Leeds, at 6.30 p.m., on the following dates :—

1931.

Sept. 29th. "Duties and Liabilities of Auditors," by Mr. W. H. Grainger, F.S.A.A.

Oct. 13th. "Income Tax," by Mr. Victor Walton, F.C.A.

Oct. 27th. "Anomalies in the Law affecting Insolvencies," by Mr. David I. Sandelson, Solicitor.

Nov. 10th. "County Court Procedure," by Mr. Walter Pullan, Registrar, County Court, Leeds.

Nov. 24th. "Estate Duties in Relation to Limited Companies," by Mr. Stanley A. Spofforth, A.S.A.A.

1932.

Jan. 19th. "Company Law with special reference to Accountants," by Mr. C. Allison Sales, F.S.A.A., LL.B. (Lond.).

Feb. 2nd. "Bankruptcy Law," by Mr. John H. Bromley, Solicitor.

Feb. 16th. "Income Tax," by Mr. Ronald Staples (Editor of *Taxation*).

Mar. 1st. "British Trade Situation," by Prof. J. H. Richardson (Montague Burton Chair of Industrial Relations), The University, Leeds.

Mar. 15th. Joint Meeting with the Chartered Institute of Secretaries (West Yorkshire Branch), *re* Limited Companies, at 7 p.m.

Mar. 29th. "The Candidate's View of Economics," by Mr. Arnold N. Shimmin, M.A. (Economics Department), The University, Leeds.

Society of Incorporated Accountants and Auditors.

EXAMINATION RESULTS IN SOUTH AFRICA.

MAY, 1931.

Final.

Alphabetical Order.

ABRAHAMS, REUBEN, Winton's Chambers, West Street, Durban, Practising Accountant.

BOWSHER, LAURENCE FRANK, Clerk to E. R. Syfret & Co., Corner of Burg and Wale Streets, Cape Town.

DELBRIDGE, JOHN SETON, B.Com., Clerk to P. Milne Duncan, St. George's House, St. George's Street, Cape Town.

FREEMAN, CHARLES NOEL, Clerk to G. Hadfield (Douglas Low & Co.), 32, Fletchers Chambers, Longmarket Street, Cape Town.

JACKSON, CLIFFORD COULTON, Clerk to J. Fleming Orr, Pratt & Mockford, 4/8, Trust Buildings, Fox Street, Johannesburg.

LAW, WILLIAM ARCHIBALD, Clerk to E. S. Crosoer (George Mackeurtan, Son & Crosoer), Old Well Court, 376, Smith Street, Durban.

MACDONALD, ANGUS POWDITCH, Clerk to N. A. Stott (Deloitte, Plender, Griffiths, Annan & Co.), 201, Consolidated Building, Fox Street, Johannesburg.

NORTH, COLIN GEORGE, Clerk to G. E. Noyce (W. Murray Smith & Berend), 378-380, Smith Street, Durban.

PHILIP, EDWARD ROBERT, B.Com., Clerk to F. Anton Eveleigh, Library Buildings, Market Square, Port Elizabeth.

RAMSDEN, CLEMENT DALES, Clerk to S. C. Carruthers, 73/5, National Bank Buildings, Simmonds Street, Johannesburg.

SMITH, FREDERICK MURRAY, Clerk to A. S. Hooper (Deloitte, Plender, Griffiths, Annan & Co.), Norwich Union Buildings, St. George's Street, Cape Town.

WELLS, VERNON JOHN, Clerk to Charles Hewitt (Charles Hewitt & Trollip), 55/60, Sauers Buildings, Loveday Street, Johannesburg.

WELSH, ROBERT GOLLAN, Clerk to James Douglas (Douglas Mackelvie & Co.), Sun Building, Corner of St. George's and Longmarket Streets, Cape Town.

WIGG, CYRIL CHARLES, Clerk to Pulbrook & Wright, Manica Chambers, Manica Road, Salisbury.

WINTERTON, OSWALD HENRY, Clerk to W. R. Fraser (George Mackeurtan, Son & Crosoer), Old Well Court, 376, Smith Street, Durban.

(12 *Candidates failed to satisfy the Examiners.*)

Intermediate.

Order of Merit.

BAKER, HARRY, Clerk to K. White (Alex. Thal, White & Co.), United Buildings, 53-55, St. George's Street, Cape Town. (*Bracketed Fifth Place Certificate.*)

Alphabetical Order.

BARCLAY, HENRY GEORGE, Clerk to F. J. Thresher (Deane & Thresher), Barclays Bank Buildings, St. Andrew's Street, Bloemfontein.

BROWN, HERBERT JOHN LAW, Clerk to Edward Clothier, Royal Exchange Buildings, Durban.

CHARLTON, ANGUS LESLIE, Clerk to Deloitte, Plender, Griffiths, Annan & Co., 201, Consolidated Building, Fox Street, Johannesburg.

FORBES, LESLIE WILLIAM, Clerk to S. C. Carruthers, 73-75, National Bank Buildings, Simmonds Street, Johannesburg.

GALLAGHER, NOEL BRUCE, Clerk to G. E. D. Orpen (E. R. Syfret & Co.), Corner of Burg and Wale Streets, Cape Town.

HEWITT, PATRICK CHARLES, Clerk to A. D. Hodgson (Douglas Low & Co.), North British Buildings, Commissioner Street, Johannesburg.

LAMB, FRANCIS BONNAR WILSON, Clerk to R. E. Garwood (Dougall, Lance & Hewitt), 10, Standard Bank Chambers, Johannesburg.

LOCKE, GEORGE CECIL, Clerk to J. D. M. Philip (Dougall, Lance & Hewitt), 257, Pretorius Street, Pretoria.

MARSHALL, WILLIAM ROBERT, Clerk to A. D. Hodgson (Douglas Low & Co.), North British Buildings, Commissioner Street, Johannesburg.

OGILVIE, COLIN GORDON, Clerk to H. P. Webber (Goldby, Panchaud & Webber), Beresford House, Main Street, Johannesburg.

OLDHAM, NORMAN BENSON, Clerk to J. D. Cunningham (George Mackeurtan, Son & Crosoer), Old Well Court, 376, Smith Street, Durban.

PARKER, GEORGE METHUEN, Clerk to H. Greenwood, Reitz Street, Kroonstad.

RODE, HILMAR, B.Com., Clerk to Sir Harry Hands (Hands & Shore), 106, St. George's Street, Cape Town.

SMETHERHAM, JOHN FRANCIS, Clerk to R. E. Garwood (Dougall, Lance & Hewitt), 10, Standard Bank Chambers, Johannesburg.

SUMNER, FRANCIS JOHN, Clerk to N. A. Stott (Deloitte, Plender, Griffiths, Annan & Co.), 201, Consolidated Building, Fox Street, Johannesburg.

TROLLIP, IVOR WILLIAM RAYNES, Clerk to L. P. Kent (Palmer & Kent), Transvaal Goldfields Building, 6, Fraser Street, Johannesburg.

WALKER, JAMES SAMPSON, Clerk to R. A. H. Palmer, 53, Permanent Buildings, Harrison Street, Johannesburg.

WELHAM, NORMAN LOVEL, Clerk to F. J. Beaton (Salisbury, Beaton & Raynham), 9 and 11, Christian Street, Kimberley.

WILKINS, JOHN SELWYN KINGSLEY, Clerk to Francis Dix (E. Danckwerts & Co.), 35/39, Winchester House, Loveday Street, Johannesburg.

(14 *Candidates failed to satisfy the Examiners.*)

Preliminary.

SYMOND, JOHN HUGHES, 127, Ampthill Avenue, Benoni, Transvaal.

WHITE, SYDNEY HOWARD, 286, Manning Road, Durban.

Scottish Notes.

(FROM OUR CORRESPONDENT.)

The "W. D. Hall" Prize.

This prize has been awarded by the Scottish Council to Mr. Edwin H. Harris, Glasgow, who took fourth place in the May Final examination.

Cost of Social Services.

The Local Government Officers' Summer School was held last month at St. Andrews. Several Incorporated Accountants, including Mr. J. D. Imrie, F.S.A.A., City Chamberlain, Edinburgh, took part in the proceedings.

Mr. James Cunnison, Lecturer on Social Economics, Glasgow University, dealt with the growth in the provision of social service by the State. He showed that the total expenditure on such objects had increased since pre-war years by 600 per cent., or, allowing for the increase of population and the fall in the value of money by about 300 per cent. per head of the population. Such expenditure, which was equivalent to about 8 per cent. of the national income in 1911, was now equivalent to about 9 per cent.

The provision of these services involved a deduction from the incomes of tax and ratepayers amounting to about 10 per cent., and an addition, either in form of money or of goods and service, to the real incomes of the recipients, amounting to about 20 per cent. of the national wage bill.

The bearing of this provision on the financial commitments of local authorities was discussed, with special reference to the problem of grants from the National Exchequer.

Investment Research.

The Scottish Faculty of Actuaries Investment Committee shares with the corresponding committee of the Institute of Actuaries the responsibility for the production of the Actuaries Index. At a meeting held in Edinburgh recently a paper was read by Mr. A. C. Murray, F.F.A., secretary of the Scottish Equitable Mutual Life Assurance Society, on the "Actuaries' Investment Index." Mr. Murray explained what an index number is, and, in view of the extension of investment business, the necessity for a comprehensive scheme of such indices relating to Stock Exchange securities. The Actuaries' Investment Index divided investments into no less than 33 groups, each of which was separately emphasised. These provided a price index number or a yield average. For example, the group of insurance shares, it was satisfactory to observe, was amongst the very few ordinary share groups showing a drop in the price index of less than 10 per cent. over the past two years. In some groups the fall over the period exceeded 50 per cent.

An Income Tax Repayment Question.

The First Division of the Court of Session recently gave judgment in an Exchequer case in which the Commissioners brought under review a decision of the Commissioners for the General Purposes of the Income Tax Acts for the Brechin District of Angus in an appeal by the executors of Mrs. Elizabeth Ross Jackson, or Henderson, of Briarholme, Johnshaven, against the disallowance of a claim for repayment of income tax amounting to £3 17s. 9d. in respect of the period from April 6th, 1929, to May 16th, 1929, the date of the death of Mrs. Henderson. The Commissioners sustained the appeal, and the question in law for the Division was whether the executors were entitled to repayment of the income tax claimed.

The claim by the executors was in the first place for repayment of the tax deducted from the interests and dividends received by Mrs. Henderson between April 6th, 1929, and the date of her death, and the Inspector of Taxes, to whom the claim was made, allowed this claim for repayment. But, in the second place, the executors claimed repayment on the proportion of tax deducted from interests and dividends subsequently received by them corresponding to the number of days between the date when the last payment was made to Mrs. Henderson and the date of her death. The Inspector refused this claim, but the General Commissioners allowed it.

The actual amount in dispute was trifling, but the appeal appeared to be supported by other interests much wider than the executors in whose name these proceedings were taken.

The Division answered the question of law in the negative.

The Lord President, in the course of his remarks, said that the question was raised on the assumption that the executors had right to make such a claim—whether the claim could competently extend to so much of the interest actually received by her executors after her death as (on the principle of the apportionment of accruing interest) corresponded to the number of days between the date when she actually received the last payment of interest and the date of her death. If that question was related back to Rule 1 of the Miscellaneous Rules applicable to Schedule D, it was seen that the point was whether Mrs. Henderson could be said to have been "the person receiving or entitled to" this apportioned part of the interest within the meaning of the rule. His Lordship did not think she could be so described. Mrs. Henderson did not in fact receive any part of the current term's interest, and did not in fact live to become entitled to it. She never suffered deduction of tax from any part of that interest, and consequently never had a title to claim repayment of it. It was unheard of, under the Income Tax Acts, that the income tax payer in returning his annual income for assessment should include or be asked to include an apportionment of interests current, but still unpaid and not yet due, at the end of the year. In short, a person's annual income from money laid out at interest was, for income tax purposes, just what came in to him during the year. His Lordship thought the question in the case should be answered in the negative. The other Judges concurred.